Residential Landlord-Tenant Law Benchbook



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Michigan Judicial Institute

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Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This benchbook was initially published in 2014, and the text has been revised, reordered, and updated through September 23, 2026.

Note on Precedential Value

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. "The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept." *Hudson v Dep't of Corrections*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). "Maintaining consistency in the law is one of the primary benefits of stare decisis, as it provides the public with some level of predictability in how the courts have interpreted the law." *Plachta v Plachta*, ___ Mich App ___, ___ (2026). Generally, trial courts "must follow the published decisions of the Court of Appeals and the Michigan Supreme Court." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382 (2007).

Negative subsequent history. Several cases in this book have been reversed, vacated or overruled in part and/or to the extent that they contained a specific holding on one issue or another. While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated or overruled in its entirety. Some cases state that "an overruled proposition in a case is no reason to ignore all other holdings in the case." *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, "that portion of the Court of Appeals' opinion [had] no precedential effect and the trial court [was] not bound by its reasoning"). However, other cases provide that a "decision that has been reversed on other grounds has no precedential value." *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing *Taylor v Kurapati*, 236 Mich App 315 (1999). See also *Horace v City of Pontiac*, 456 Mich 744, 754-755 (1998) (holding that where the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, "no rule of law remain[s] from the Court of Appeals decision"). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part. *Stein*, 303 Mich App at 389.

Because it may be unclear under certain circumstances how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

United States Supreme Court. Michigan courts are bound by "our state Supreme Court precedent, unless the United States Supreme Court has addressed a federal

constitutional question." *People v Beasley*, 239 Mich App 548, 559 (2000). "A plurality opinion of the United States Supreme Court, however, is not binding precedent." *Id*., citing *Texas v Brown*, 460 US 730, 737 (1983).

Other federal and state courts. "Cases from foreign jurisdictions, which are not binding, can be persuasive." *Bazzy v Citizens Ins Co of America*, ___ Mich App ___, ___ (2025) (cleaned up). Accordingly, state courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts "are free to follow or reject their authority." *People v Gillam*, 479 Mich 253, 261 (2007). "Caselaw from other states is not binding but may be considered for its persuasive value." *Kewadin Casinos Gaming Auth v Patterson Earnhart Real Bird & Wilson LLP*, ___ Mich App ___, ___ n 4 (2026) (quotation marks and citation omitted).

Michigan Supreme Court. A Michigan "Supreme Court opinion becomes binding precedent for intermediate appellate and trial courts at the time a signed opinion is date-stamped and filed with the Clerk of the Supreme Court, unless" the opinion "specifically states that the opinion is effective at a different date." *Riley v Northland Geriatric Center*, 425 Mich 668, 678 (1986). "'The clear rule in Michigan is that a majority of the [Michigan Supreme] Court must agree on a ground for decision in order to make that binding precedent for future cases.'" *People v Sexton*, 458 Mich 43, 65 (1998), quoting *People v Anderson*, 389 Mich 155, 170 (1973). See MCR 7.315(A) ("Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting."). "Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding . . . under the doctrine of *stare decisis*." *Negri v Slotkin*, 397 Mich 105, 109 (1976). However, "a [plurality] decision rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum is binding on the Court of Appeals and the trial courts." *Id*. at 106. "'If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties.'" *Sexton*, 458 Mich at 65, quoting *Anderson*, 389 Mich at 170. In other words, "plurality opinions in which no majority of the participating justices agree with respect to the reasoning for the holding are not generally considered authoritative interpretations that are binding under the doctrine of stare decisis." *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 613 (2010).

For information regarding the precedential value of an order or judgment issued by the Michigan Supreme Court, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(B).

Michigan Court of Appeals. "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). Accordingly, "the publication of an opinion of the Court of Appeals creates binding precedent until the Michigan Supreme Court enters a decision altering [the] Court's

decisions or its rationale." *Esordi v Macomb Twp*, ___ Mich App ___, ___ (2025) (citation omitted). "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in [MCR 7.215]." MCR 7.215(J)(1). "Under the plain terms of MCR 7.215(C)(2), all published decisions of [the] Court [of Appeals] issued prior to November 1, 1990, are binding, precedential decisions under stare decisis." *Plachta*, ___ Mich App at ___. "They are *not* merely persuasive and are not on par with unpublished decisions." *Id*. at ___. Although the Court of Appeals is "not strictly required to follow uncontradicted opinions . . . decided before November 1, 1990, those opinions are nonetheless considered to be precedent and entitled to significantly greater deference than are unpublished cases." *People v Bensch*, 328 Mich App 1, 7 n 6 (2019) (quotation marks and citation omitted). See also *People v Schurr*, 350 Mich App 47, 76 n 6 (2024) (stating "decisions published before November 1, 1990, [are binding] only on the trial courts and only are precedent if uncontradicted"). In other words, "there is no difference in the precedential effect of a pre- versus post-1990 decision." *Plachta*, ___ Mich App at ___. "Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal." *Id*. at ___.

For more information regarding the precedential nature of Court of Appeals opinions, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(C).

Acknowledgments

The Michigan Judicial Institute, in collaboration with Legal Services of South Central Michigan (LSSCM) and the Michigan Poverty Law Program (MPLP), and with the assistance of a diverse editorial advisory committee, created the *Residential Landlord-Tenant Law Benchbook*. The content of this benchbook derived from the former MPLP publication, *Michigan Residential Landlord-Tenant Law* (Third Edition).

The *Residential Landlord-Tenant Law Benchbook* is a comprehensive publication intended to provide judges with a readily accessible source of both substantive and procedural law relevant to landlord-tenant proceedings. The benchbook primarily addresses residential landlord-tenant law, but it also offers a broad discussion of land contracts and mortgages—issues district courts may be faced with in the course of adjudicating landlord-tenant matters.

The *Residential Landlord-Tenant Law Benchbook* was authored by MJI Research Attorney Phoenix Hummel and edited by MJI Publications Manager Sarah Roth. Work on the *Residential Landlord-Tenant Law Benchbook* was overseen by an Editorial Advisory Committee facilitated by Phoenix Hummel.

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Glossary

Chapter 1: General Landlord-Tenant Law

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1.1 Creation of a Tenancy[1]

A landlord-tenant relationship is created when the owner of an estate conveys to another a lesser interest in the property for a term less than the owner's for valuable consideration. *Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 605 (1993). In a landlord-tenant relationship, the lessee has "the use and enjoyment of the premises during the period stipulated." *Id.*; *Dep't of Natural Resources v Bd of Trustees of Westminster Church of Detroit*, 114 Mich App 99, 104 (1982). According to the *Grant* Court, the following elements must be present for a landlord-tenant relationship to exist:

> permission or consent on the part of the landlord to occupancy by the tenant, subordination of the landlord's title and rights on the part of the tenant, a reversion in the landlord, the creation of an estate in the tenant, the transfer of possession and control of the premises to [the tenant], and . . . a contract, either express or implied, between the parties. [*Grant*, 443 Mich at 605 n 6.]

See also *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 441-442 (1998).

Consideration may be satisfied by services as well as money. *Grant*, 443 Mich at 606; *Munson v Menominee Co*, 371 Mich 504, 512-513 (1963).

The conveyance must be consensual, and the relationship may be express or implied. See *Grant*, 443 Mich at 605-606. In fact, the existence of title to property in one person and possession of the property by another creates the presumption of a tenancy. *Butler v Bertrand*, 97 Mich 59, 64-65 (1893); *Hogsett v Ellis*, 17 Mich 351, 367 (1868). Michigan courts have recognized implied tenancies in such diverse situations as the letting of a summer cottage for a week, *Heward v Borieo*, 35 Mich App 362, 363 (1971), and caretaking for an athletic club, *Grant*, 443 Mich at 605-606.

A tenancy is different from a license. A license simply involves permission to do some act on the land of another. *McCastle v Scanlon*, 337 Mich 122, 133 (1953); *United Coin Meter Co v Gibson*, 109 Mich App 652, 655 (1981). A license gives permission for use without any permanent interest in land. *Macke Laundry v Overgaard*, 173 Mich App 250, 254 (1988); *United Coin Meter Co*, 109 Mich App at 655. Placing a sign on property, for example, is a form of license. *Lewis v Baxter Laundries*, 254 Mich 216, 217 (1931).

[1] For assistance in understanding and managing landlord-tenant matters see http://michiganlegalhelp.org/self-help-tools/housing.

A common area of confusion is identifying the relationships of innkeeper-guest and landlord-tenant. Distinguishing the two is important for purposes of determining whether or not an owner possesses certain lien rights on the guest's or tenant's property. "[T]he traditional distinction[] . . . between a 'guest' and a 'tenant' [is] . . . the right of a tenant to exclusive legal possession and control and the right of a guest to mere use of the premises." *Ann Arbor Tenants Union*, 229 Mich App at 447 (holding that residents in single room occupancy units at a YMCA were guests because the essential characteristics of a tenancy—most notably, exclusive possession and control—were not present), citing *Poroznoff v Alberti*, 161 NJ Super 414, 419-421 (1978).

To determine whether a person is a guest or a tenant requires a look at the totality of circumstances, including the description of the relationship used by the parties, the payment (weekly or monthly rather than daily), and the type of accommodations. *Ann Arbor Tenants Union*, 229 Mich App at 446-447, citing *Layton v Seward Corp*, 320 Mich 418 (1948). Also of importance is whether the occupant has another residence and is on the premises temporarily, or whether the occupant intends to reside on the premises for an indefinite time. See generally, *Layton*, 320 Mich at 421, 423-425 (the totality of circumstances involved whether the guest was a resident of the city in which the inn was located, whether there was a lease or term of tenancy established, the name of the place where the guest stayed, i.e., "hotel" as opposed to "apartments," notice posted in the rooms referred to a hotel and guest relationship, the guest occupied a single room rather than a suite, and the innkeeper relied on the Innkeeper's Act of Michigan in its defense).[2] The nomenclature used to describe the relationship is not necessarily probative of the nature of the relationship and does not preclude the establishment of a tenancy. *Grant*, 443 Mich at 606, 608 (holding that "where the essential characteristics of a landlord-tenant relationship are present, an [agreement titled 'Contract of Employment'] may create a tenancy").

A. Types of Tenancies

1. Tenancy for Years or for a Definite Term

A *tenancy for years or for a definite term* is "[a] tenancy whose duration is known in years, months, or days from the moment of its creation." Black's Law Dictionary (9th ed). If the period is for longer than one year, the lease must be in writing to comply with the statute of frauds. MCL 566.108.

[2] See also *Brams v Briggs*, 272 Mich 38, 43 (1935), which differentiates between lodgers and tenants based on the degree to which the owner retains direct control and supervision over the rooms.

"It is a general rule that where a tenant under a valid lease for years holds over, the law implies a contract to renew the tenancy on the same terms for another year. It is also the rule that a presumption arises from the holding over by the tenant and acceptance of rent by the landlord that the parties intend to renew the tenancy." *Kokalis v Whitehurst*, 334 Mich 477, 480 (1952). "'Where there is no express agreement for a renewal of an annual lease and the tenant remains in possession after the term has expired, the landlord may treat him as a trespasser or may acquiesce in his continuing in possession, and in the latter event the law presumes that the tenant holds for another year subject to the terms of the previous lease.'" *Kokalis,* 334 Mich at 481, quoting *Rice v Atkinson, Deacon, Elliott Co*, 215 Mich 371, 372 (1921) (alterations added).

2. Tenancy at Will

A tenancy at will is for an indefinite period of time and continues until terminated by either party "upon the tender of sufficient notice." *Frenchtown Villa v Meadors*, 117 Mich App 683, 689 (1982).

"The general rule is that a month-to-month tenancy is a tenancy at will[.]" *Aspen Enterprises, Ltd v Bray*, 148 Mich App 9, 14 (1985).

3. Tenancy by Sufferance

A *tenancy by sufferance* is "[a] tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired." Black's Law Dictionary (9th ed). A tenancy by sufferance need not originate from a landlord-tenant relationship. *Felt v Methodist Educ Advance*, 251 Mich 512, 517 (1930). "As a general rule, when a tenant comes rightfully into possession of land by permission of the owner and continues to occupy the same after the time for which, by such permission, he had the right to hold the same, he becomes a tenant by sufferance." *Id*.

The following cases concluded that, under the facts of each case, a tenancy by sufferance was created:

- *Harrington v Sheldon*, 196 Mich 388, 391 (1917) (life tenant of property died, and the life tenant's lessee became a tenant by sufferance of the owner of the reversion).

- *Bennett v Robinson*, 27 Mich 26 (1873) (property was sold and seller remained in possession without apparent right).

- *Durda v Chembar Development Corp*, 95 Mich App 706, 708, 714 (1980) (defendant-tenant failed to pay on land contract and remained in possession of property beyond the cure period).

B. New Owners Affecting an Existing Tenancy

Generally a tenancy is an estate in land and takes precedence over later interests arising during the existence of the tenancy. *Plaza Investment Co v Abel*, 8 Mich App 19, 24-25 (1967). Thus, if an owner leases his or her property and then sells it before the lease expires, the new owner is subject to the term remaining of the lease. *Id*. at 19, 23.

Compare *Harrington*, 196 Mich at 391, where the Court held that "the death of a life tenant terminates the lease of the premises existing between him and his lessee, and that the latter becomes a tenant by sufferance of the owner of the reversion." See also *Marks v Corliss' Estate*, 256 Mich 460, 462 (1932), where the Court stated, "Where the lease terminates by the substitution of a landlord not bound by the lease, the tenant continues in possession by sufferance[,]" citing *Harrington*, 196 Mich at 391. This principle has been applied by district courts to require a mortgagee who forecloses to treat tenants of the former mortgagor as tenants by sufferance with the right to a 30-day notice before eviction pursuant to MCL 554.134.[3]

C. Status of Caretakers and Other Employees Who Reside in Employer Housing

Rent may be paid in the form of services as well as money. *Grant*, 443 Mich at 606; *Shaw v Hill*, 79 Mich 86 (1889). In *Grant,* 443 Mich at 599, the plaintiff was granted the use and occupancy of an apartment pursuant to an employment contract in exchange for full-time caretaking services for a clubhouse. When he was fired and summarily locked out of his apartment without further notice, he brought an action in circuit court for injunctive relief under the anti-lockout statute, MCL 600.2918.[4] *Grant,* 443 Mich at 600, 607-608. The

[3] MCL 554.134(1) states, in part:

> Except as provided otherwise in this section, an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. If the rent reserved in a lease is payable at periods of less than 3 months, the time of notice is sufficient if it is equal to the interval between the times of payment.

Supreme Court held that an implied landlord-tenant relationship existed, entitling the plaintiff to bring an action for unlawful interference with his or her possessory rights as a tenant. *Id.* at 608. The Court stated:

> [T]he essential characteristics of a landlord-tenant relationship are present. Plaintiff agreed to provide his services as caretaker in exchange for use and occupancy of the apartment at defendant's clubhouse; plaintiff's consideration for the use and occupancy of the apartment was his labor; defendant transferred possession and control of the premises to plaintiff; plaintiff occupied the apartment exclusive of defendant; and the length of the tenancy was for an agreed-upon duration—the length of the employment relationship. That the agreement is labeled a "Contract of Employment," as noted by the dissent, is not probative of the nature of the relationship between the parties. [*Grant*, 443 Mich at 606.]

More simply stated, "[A] landlord-tenant legal relationship may be recognized pursuant to a contract of employment where use and occupancy of an apartment are the sole and full compensation for the services rendered." *Grant*, 443 Mich at 599.

Grant requires courts to look at the individual facts of each resident-employee situation to determine whether a landlord-tenant relationship exists. See *Grant*, 443 Mich at 605-607. Although the *Grant* Court cited with favor two Michigan federal court decisions which identified landlord-tenant relationships in the migrant farmworker/labor camp context,[5] the Court of Appeals denied certain migrant farmworkers living in a labor camp the status of tenants under MCL 554.601 because they were paid the same wage as workers who did not live in the camp, and the Court was unable to determine any consideration for the housing provided. *DeBruyn Produce Co v Romero*, 202 Mich App 92, 108-110 (1993).

1.2 Lease Provisions

A lease is a conveyance of some portion of an owner's interest to a tenant for valuable consideration. *Royal Oak Wholesale Co v Ford*, 1 Mich App 463, 466 (1965). "A lease is a contract as well as a conveyance, and ordinary rules of contract interpretation apply." *Sprik v Univ of Mich Bd of*

[4] See Section 1.3 for information on the anti-lockout statute.

[5] *Rodriguez v Berrybrook Farms, Inc*, 672 F Supp 1009, 1020 (WD Mich, 1987), and *Folgueras v Hassle*, 331 F Supp 615, 621 (WD Mich, 1971).

Regents, 43 Mich App 178, 193 (1972). As noted, the consideration may be in services or money. *Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 605 (1993). "Generally where a premises is leased to a tenant, the lease is considered as equivalent to a sale of the premises for the lease term." *McCurtis v Detroit Hilton*, 68 Mich App 253, 255 (1976). This principle is the basis for the transfer of control of the property from the title owner to the person in possession. *Shackett v Schwartz*, 77 Mich App 518, 526-527 (1977). However, a tenant is only responsible for those areas where he or she has exclusive control, as detailed in the lease. *Id*. at 526-527 (lease provided for tenant's exclusive control of only certain rooms, and thus, other areas were the landlord's responsibility).

A. Oral Leases (Statute of Frauds)

"The statute of frauds is an affirmative defense that is not only invoked to prevent fraudulent construction of a written contract, but also to prevent disputes over what provisions were included in an oral contract." *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 82 (1989).

In general, with respect to landlord-tenant interests, the statute of frauds stands for the proposition that leases for terms in excess of one year must be reflected in some kind of writing. See *Jim-Bob*, 178 Mich App at 81-88. However, a lease longer than one year need not be written out in its entirety; a written note or memorandum representing an oral discussion of lease provisions may suffice. *Id*. at 83. Where no comprehensive writing of a lease agreement exists, the parol evidence rule permits the use of extrinsic evidence to supplement the content of the writing. *Id*.

Specifically, MCL 566.106 states:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

In addition, MCL 566.108 states, in part:

> Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by

some person thereunto by him lawfully authorized in writing[.]

B. Written Leases

Written leases are most commonly "form leases," developed or selected by the landlord. At a minimum, written residential leases must comply with the Michigan Truth in Renting Act, MCL 554.631 *et seq*.[6]

1. Requirements of Michigan Truth in Renting Act

The Truth in Renting Act (TRA), MCL 554.631 *et seq.*, is applicable only to written rental agreements for residential premises. See MCL 554.632(a). The TRA serves two purposes:

- it *prohibits* certain objectionable provisions from being included in written residential leases, and
- it *requires* certain provisions to be included in written residential leases, MCL 554.634(1).

2. Judicial Interpretation of Leases

"Unclear portions of a lease are construed against lessors, unless the lessee drafted it." *Carl A Schuberg, Inc v Kroger, Inc*, 113 Mich App 310, 313 (1982). However, courts should favor the free alienability of land. *Id*. Thus, "[e]ven when express restrictive covenants exist, courts [should] construe such provisions strictly against parties seeking their enforcement." *Id.*

3. Assignments and Subleases

A tenant is presumed to have the right to sublease or assign a lease. *Patterson v Butterfield*, 244 Mich 330, 338 (1928) ("In the absence of statutory or contractual restrictions, a lessee . . . may assign or sublet his leasehold interest without the lessor's consent or an express provision in the lease giving him such right."). See also *Schuberg, Inc*, 113 Mich App at 314. Also, "[t]here goes with every rental of premises the right of beneficial enjoyment by the tenant for the purpose for which the premises are rented, at least to the extent disclosed to the lessor at the making of the lease." *Grinnell Brothers v*

[6]For more information on the applicability and enforcement of the Truth in Renting Act, see Section 2.2.

Asiuliewicz, 241 Mich 186, 188 (1927); *Royal Oak Wholesale Co*, 1 Mich App at 466.

If the lease prohibits assignment, the tenant may still sublease. A sublease, as distinguished from an assignment, involves the transfer to another person of some portion, but not all, of the lease. Black's Law Dictionary (9th ed). It is a lease by the tenant to a third person of a part of the premises, or of the full premises for a period less than the term of the primary lease. See *Miller v Pond*, 214 Mich 186, 193 (1921).

4. Extension of Lease

In *Stancroff v Brown*, 76 Mich App 589, 592-595 (1977), the Court upheld a 10-year written extension provision which was silent as to the amount of rent. Where the landlord had permitted the tenant to make substantial improvements to the premises but later refused to bargain in good faith as to the rent for the extended period, the Court held that a reasonable rent was implied in the extension agreement. *Id*. at 592, 595. The case was remanded to the trial court for a determination of the reasonable rental value. *Id.* at 596.

5. Late Fees

Many landlords impose late fees as penalties for the late payment of rent and seek to add these costs to a tenant's rent amount. Whether such fees will be added to the rent due depends on whether the late fee provision is viewed as a penalty clause imposed by the landlord or as a liquidated damage clause. "Whether a provision is a penalty or liquidated damages is a question for the court and not the jury." *Edoff v Hecht*, 270 Mich 689, 696 (1935). However, the amount of damages must be determined by the trier of fact. *Hubbard v Epworth*, 69 Mich 92, 94 (1888).

Michigan law has long been settled in its opposition to penalty clauses in contracts of all kinds.See *Wilkinson v Lanterman*, 314 Mich 568, 573 (1946) (contract involving the purchase of property). The *Wilkinson* Court stated that "'[a] test as to whether a provision for stipulated damages is enforceable is the reasonableness of the amount.'" *Wilkinson*, 314 Mich at 575, quoting *Hall v Gargaro*, 310 Mich 693, 697 (1945). Therefore, late fees in a rental agreement must be reasonably related to the damages suffered by the landlord. Neither the parties' intent nor their characterization of the charge can save a penalty clause; it will still be judged according to the nature of the sum in connection with the subject matter of the contractual

provisions to which it applies. *Noble v Strum*, 210 Mich 462, 469 (1920).

"[A] provision for liquidated damages for breach of contract will be regarded as enforceable, and not as a penalty, where it embraces the principle of just compensation for the loss or injury actually sustained." *Roland v Kenzie*, 11 Mich App 604, 612 (1968), citing *Curran v Williams*, 352 Mich 278 (1958).

> 'It is a well-settled rule in this State that the parties to a contract can agree and stipulate in advance as to the amount to be paid in compensation for loss or injury which may result in the event of a breach of the agreement. Such a stipulation is enforceable, particularly where the damages which would result from a breach are uncertain and difficult to ascertain at [the] time [a] contract is executed. If the amount stipulated is reasonable with relation to the possible injury suffered, the courts will sustain such a stipulation.' [*Roland*, 11 Mich App at 612, quoting *Curran*, 352 Mich at 282.]

"If the actual damages are uncertain and difficult to ascertain, or are of a purely speculative character, and the contract furnishes no aid in determining this amount, a provision for reasonable damages will be held to be liquidated damages and not a penalty." *Roland*, 11 Mich App at 611. See *Papo v Aglo Restaurants of San Jose Inc,* 149 Mich App 285 (1986).

Courts have held that clauses providing the same damages for several different breaches do not provide for damages reasonably related to a specific breach and are therefore unenforceable. See e.g., *Fed Electric Co v Nat'l Service Stations*, 255 Mich 425, 427 (1931); *Rothenberg v Follman*, 19 Mich App 383, 393 (1969). This is true even if the damages caused by the actual breach in question were justified. *Wilkinson*, 314 Mich at 575-576.

To recover a late charge, the plaintiff must establish the reasonableness of the amount of claimed damages. See *Curtis v Hartford Accident & Indemnity Co*, 335 Mich 416, 418-419 (1953).

6. Court Costs and Attorney Fees

In some cases a lease will attempt to assess collection costs against a tenant which may expressly, or when enumerated, include a set amount of attorney fees or court litigation costs incurred in collecting rent or in bringing an eviction action.[7]

However, the Truth in Renting Act specifically prohibits such clauses in residential leases.[8] MCL 554.633(1)(g) states:

> (1) A rental agreement must not include a provision that . . .
>
> * * *
>
> (g) [p]rovides that a party is liable for legal costs or attorney fees incurred by another party, in connection with a dispute arising under the rental agreement, in excess of costs or fees specifically permitted by statute.

7. Prohibition Against Pets

A clause prohibiting a tenant from keeping a pet on the leased premises is generally valid. *First Mortgage Bond Co v Saxton*, 312 Mich 520, 522 (1945). However, certain federally subsidized housing developments for the elderly or persons with disabilities must comply with special rules that prohibit the exclusion of common household pets. 12 USC 1701r-1. 12 USC 1701r-1(a)(1)-(2) states:

> (a) Restrictions on ownership
>
> No owner or manager of any federally assisted rental housing for the elderly or handicapped may—
>
> (1) as a condition of tenancy or otherwise, prohibit or prevent any tenant in such housing from owning common household pets or having common household pets living

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[7]For a discussion on calculating reasonable attorney fees, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8.

[8]MCR 4.201(L)(4) allows the award of only those costs permitted by MCL 600.5759(1) (Summary Proceedings Act). That statute provides for costs not exceeding:

(a) For a motion that results in dismissal or judgment, $75.00.

(b) For a judgment taken by default or consent, $75.00.

(c) For the trial of a claim for possession only, $150.00.

(d) For the trial of a claim for a money judgment only, $150.00.

(e) For a trial including both a claim for possession and a claim for a money judgment, $150.00.

The statute also states that "[i]n determining taxable costs in tenancy cases, the judge shall take into consideration whether the jury or judge found that a portion of the rent allegedly due to the [landlord] was excused by reason of the [landlord's] breach of the lease or breach of his or her statutory covenants [of fitness and repair]." MCL 600.5759(2).

> in the dwelling accommodations of such tenant in such housing; or
>
> (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the ownership of such pets by, or the presence of such pets in the dwelling accommodations of, such person.[9]

The Fair Housing Act (FHA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) require a landlord to make an exception to his or her "no pets" policy in order to reasonably accommodate a person with a disability who owns an assistance animal. 29 USC 794; 42 USC 3604. An *assistance animal* is "[a]n animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability." See https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals. "Breed, size, and weight limitations may not be applied to an assistance animal." See https://www.hud.gov/sites/dfiles/FHEO/documents/19ServiceAnimalNoticeFHEO_508.pdf.

For more information see also www.animallaw.info/articles/dduspetsandhousinglaws.htm.

8. Prohibition Against Children

A provision prohibiting a tenant from having or keeping children on the premises is generally invalid. See MCL 37.2502(1) (providing that a "person engaging in a real estate transaction, or a real estate broker or salesperson, shall not [discriminate against a person] on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status of *an individual or anyone residing with that individual*") (emphasis added). See also MCL 554.633(1)(c), which prohibits a rental agreement provision that "[e]xcludes or discriminates against a person in violation of the [Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 to MCL 37.2804, or the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 to MCL 37.1607]."

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[9] "Nothing in [12 USC 1701r-1] may be construed to prohibit . . . the removal from any such housing of any pet whose conduct or condition is duly determined to constitute a nuisance or a threat to the health or safety of the other occupants of such housing or of other persons in the community where such housing is located." 12 USC 1701r-1(c).

"Refusing to rent to a protected class of prospective tenants is proscribed [because it] constitutes a refusal to 'engage in a real estate transaction.'" *Dep't of Civil Rights v Beznos Corp*, 421 Mich 110, 118 (1984), quoting MCL 37.2502(1) (alterations added). However, setting aside specific units or buildings in a multibuilding complex to house families with children is not per se unlawful. *Dep't of Civil Rights*, 421 Mich at 122. ELCRA "does not prohibit per se, in real estate transactions, differential treatment of persons reasonably necessitated by the special nature and characteristics of children residing with such persons." *Id*. at 121-122 (reasoning that ELCRA does not require "identical treatment of children and adults in every situation").

See also *Hamad v Woodcrest Condo Ass'n*, 328 F3d 224, 232 (CA 6, 2003), where the Court indicated that a party who "suffered the stigmatic harm of living in a community whose members were segregated on the basis of a prohibited classification" had standing to file suit against a condominium association for discriminating against families with children. In *Hamad*, the condominium association's bylaws limited families with children to purchasing or living in first-floor units, whereas families without children were allowed to purchase or live in units on the first, second, and third floors. *Id*. at 229. The *Hamad* plaintiffs' complaints were based on the Fair Housing Act's provision that "prohibits discrimination in the sale or rental of housing because of 'race, color, religion, sex, familial status, or national origin.'" *Id*. at 230, quoting 42 USC 3604.

> **Note:** At first glance, *Dep't of Civil Rights v Beznos Corp*, 421 Mich 110 (1984), may appear to conflict with *Hamad v Woodcrest Condo Ass'n*, 328 F3d 224 (CA 6, 2003). However, neither case fully decides the issue of whether families with children can be limited to, or excluded from, certain housing within a larger housing community. *Beznos Corp*, without deciding the issue with regard to a specific situation, decided that designating certain apartments for families with children did not per se violate the state's civil rights act prohibiting discrimination on the basis of the age of a person residing with an adult. *Hamad* decided that the plaintiffs had standing to file suit under the federal housing act's prohibition against discrimination on the basis of familial status where families with children were limited to occupying only certain units while families without children faced no limitations.

9. Prohibition Based on Income

Under Michigan's Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, and Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq.*, a person that is a landlord and owns five or more rental units in Michigan (including all related entities to that person) is prohibited from discriminating against an individual "based on the source of income of an otherwise eligible prospective or current tenant[.]" MCL 37.2502(3)-(4); MCL 554.601c(1)-(2). Specifically, landlords who own five or more rental units cannot, based on the source of income of an otherwise eligible prospective or current tenant, do any of the following:

- "Deny or terminate a tenancy to the prospective or current tenant." MCL 37.2502(3)(a); MCL 554.601c(1)(a).

- "Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of a rental unit or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of the rental unit." MCL 37.2502(3)(b); MCL 554.601c(1)(b).

- "Otherwise make unavailable or deny any rental unit to the prospective or current tenant if the prospective or current tenant would be eligible to rent the rental unit but for the individual's source of income." MCL 37.2502(3)(c); MCL 554.601c(1)(c).

- "Represent to the prospective tenant that a rental unit is not available for inspection, rental, or lease when in fact it is so available, or knowingly fail to bring a rental listing to the prospective tenant's attention, or refuse to permit the prospective tenant to inspect a rental unit." MCL 37.2502(3)(d); MCL 554.601c(1)(d).

- "Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of any rental unit on the basis of the prospective or current tenant's use of emergency rental assistance." MCL 37.2502(3)(e); MCL 554.601c(1)(e).

- "If the landlord requires a prospective or current tenant to have a certain threshold level of income, exclude any source of income in the form of a rent voucher or subsidy when calculating whether the

income criteria have been met." MCL 37.2502(3)(f); MCL 554.601c(1)(f).[10]

- "Attempt to discourage the rental or lease of any rental unit to the prospective or current tenant." MCL 37.2502(3)(g); MCL 554.601c(1)(g).

- "Publish, circulate, display, or cause to be published, circulated, or displayed any communication, notice, advertisement, or sign of any kind relating to the rental or lease of any rental unit that indicates a preference, limitation, or requirement based on any source of income." MCL 37.2502(3)(h); MCL 554.601c(1)(h).

- "Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates [MCL 37.2502(3) or MCL 554.601c(1)]." MCL 37.2502(3)(i); MCL 554.601c(1)(i).

- "Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under [MCL 37.2502(3) or MCL 554.601c(1)]." MCL 37.2502(3)(j); MCL 554.601c(1)(j).

ELCRA provides that these prohibitions do not apply to:

- buildings containing accommodations for not more than two families to live independently where the owner or a member of the owner's immediate family occupies one part of the property, or room(s) in a single-family dwelling if the lessor or a member of the lessor's immediate family resides in the dwelling. MCL 37.2503(1)(a); MCL 37.2502(5).

- dwellings for which the owner or lessor is leasing the home for not more than 12 months following the owner's immediate prior occupancy of the premises for at least 3 months, and the dwelling is maintained as the owner's or lessor's legal residence. MCL 37.2503(1)(b); MCL 37.2502(5).

- with respect to age and familial status provisions only, senior citizens housing accommodations, or accommodations otherwise intended for the purpose

[10] MCL 37.2502(3)(f) and MCL 554.601c(1)(f) do "not apply to emergency rental assistance." MCL 37.2502(3)(f); MCL 554.601c(1)(f).

of housing persons age 50 or over. MCL 37.2503(1)(c); MCL 37.2502(5).

Under the LTRA, "[a] person alleging a violation of [MCL 554.601c] may bring a civil action for appropriate injunctive relief or damages, or both." MCL 554.601d(1). Under MCL 554.601d(1), "'damages' means actual damages for injury or loss caused by each violation of [MCL 554.601c], or up to 3 times the monthly rent for the rental unit or units at issue, whichever is less, together with court costs and reasonable attorney fees." MCL 554.601d(1). "An action commenced under [554.601d(1)] may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or where that person's principal place of business is located." MCL 554.601d(2).

In addition, some cities have ordinances prohibiting discrimination based on the source of income, e.g., FIP (Family Independence Program) or SSI (Supplemental Security Income). Finally, HUD (Department of Housing and Urban Development) policy for federally subsidized privately owned housing developments prohibits discrimination based upon source of income.[11] *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (May 2003, revised with CHG-2, effective June 2007, and CHG-3, effective June 2009), Chapter 2.

However, a landlord may refuse to rent to a potential tenant based on the tenant's lack of sufficient income, such a refusal must be based on a good faith business determination that the potential tenant would be unable to meet the financial burden of rent. See Opinion of the Attorney General, No. 5318, June 21, 1978 (Report of Atty General, p 490).

10. Waiver of Notice

A waiver of notice to which the tenant is otherwise entitled by statute is invalid. MCL 554.633(1)(f).

11. Acceleration of Rent Generally Prohibited

Some leases provide that, upon breach of the lease, all rent due for the term of the lease shall be immediately payable in full. Attempts to enforce such a clause are common in suits to collect rent or in a summary proceeding where all rent due

[11] See Chapter 3 for information on governmentally subsidized housing.

under the lease is alleged to be owing. But see the Truth in Renting Act, MCL 554.633(1)(i), which prohibits acceleration clauses in residential leases, "unless the [acceleration] provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any."

12. Lease Where Rent Is Omitted

As long as all other terms are definite and the agreement states that the amount of rent is to be negotiated, a court should determine a reasonable amount of rent. *Stancroff v Brown*, 76 Mich App 589, 596 (1977).

13. Michigan Medical Marihuana Act (MMMA)

The MMMA does not require "[a] private property owner to lease residential property to any person who smokes or cultivates marihuana on the premises, if the prohibition against smoking or cultivating marihuana is in the written lease." MCL 333.26427(c)(3).

C. Statutory Covenants of Fitness and Reasonable Repair

MCL 554.139 creates covenants to repair and maintain the property:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:
>
> > (a) That the premises and all common areas are fit for the use intended by the parties.
> >
> > (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenant[']s wilful or irresponsible conduct or lack of conduct.
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
>
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a

lease or license shall not defeat his right to have the benefit of the covenants established herein.

D. Leases and the Michigan Consumer Protection Act

The Consumer Protection Act (CPA), MCL 445.901 *et seq.*, prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. MCL 554.633(1)(m) of the Truth in Renting Act[12] prohibits a residential lease provision from violating the CPA, and any provision that violates MCL 554.633 of the Truth in Renting Act is void. MCL 554.633(3). Therefore, any residential lease provision that violates the CPA is void.

The CPA does not apply to "[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of [Michigan] or the United States." MCL 445.904(1)(a). In applying the exemption under MCL 445.904(1)(a), "courts should consider whether the specific transaction or conduct at issue is authorized by law." *Attorney General v Eli Lilly & Co*, ___ Mich ___, ___ (2026) (overruling *Smith v Globe Life Ins Co*, 460 Mich 446 (1999), and *Liss v Lewiston-Richards, Inc*, 478 Mich 203 (2007), which had applied the exemption to "general transactions authorized by law, even where the specific alleged misconduct is prohibited").

The CPA affects written residential leases in at least two important areas.[13] First, lease clauses which appear to waive rights that are not subject to waiver, or otherwise create a probability of confusion or misunderstanding regarding tenants' rights, obligations, or remedies, are prohibited. See MCL 445.903(1)(n). Thus, clauses claiming the right to attorney fees or to evict without court order are prohibited in residential leases. Even where waivers are permitted, they must be clearly stated and the tenant must consent to them. See MCL 445.903(1)(t).

Second, landlords may not use written leases to take advantage of tenants who, because of "disability, illiteracy, or inability to understand the language of an agreement" cannot protect their interests. See MCL 445.903(1)(x).

In addition, the CPA prohibits certain practices that may occur at the time of renting, including:

[12] See Section 2.2 for information on the Truth in Renting Act.

[13] See MCL 445.903 for a complete list of practices that violate the CPA.

- failing to reveal or misrepresenting material facts of importance to the tenant, MCL 445.903(1)(s), MCL 445.903(1)(bb), MCL 445.903(1)(cc);
- failing to return a deposit when the lease agreement is not consummated, MCL 445.903(1)(u);
- misrepresenting one's authority to lease, MCL 445.903(1)(m), or that the premises will be available within a certain period of time, MCL 445.903(1)(g); and
- providing the tenant with an apartment that is not consistent with the model shown, MCL 445.903(1)(e), MCL 445.903(1)(g).

The existence of defects on the premises is a material fact, and the landlord's failure to reveal such defects may give rise to liability under the CPA. MCL 445.903(1)(s); MCL 445.903(1)(cc). The CPA is also violated where the landlord retains part of the tenant's security deposit for cleaning. *Smolen v Dahlmann Apts, Ltd*, 127 Mich App 108, 117-118 (1983), citing MCL 445.903(1)(u).

A party may claim statutory damages for violations of the CPA. See MCL 445.911(2). The CPA establishes the right of persons damaged by deceptive practices to sue for "actual damages or $250.00, whichever is greater, together with reasonable attorney fees." *Id.*

1.3 Landlord's Interference With Peaceful Possession

MCL 600.2918 is commonly known as the anti-lockout law and was enacted "in an effort to prevent landlords' self-help in executing evictions. The Legislature sought to reduce the number of violent confrontations occurring as a consequence of landlords entering onto the premises while tenants believed that they were rightfully in possession." *Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 607-608 (1993) (applying anti-lockout law to situations where housing is exchanged for employment).

MCL 600.2918 prohibits unlawful interference with a tenant's possessory interests and specifies what constitutes unlawful interference. The provisions contained in MCL 600.2918 may not be waived. MCL 600.2918(7). See also MCL 554.633(1)(j) (prohibiting a written lease provision that waives or alters a party's rights under MCL 600.2918).

A. Prohibited Conduct

Under MCL 600.2918, a tenant may bring suit against an owner who forcibly and unlawfully ejects the tenant from the leased premises:

- **Owner's liability for forcible ejection.** A person who is ejected from the premises "in a forcible and unlawful manner," or who after being ejected is forcibly kept out of the premises, is entitled to recover possession of the premises and the greater of three times the amount of his or her actual damages or $200. MCL 600.2918(1).

- **Owner's liability for interference with possessory interest.** If an owner unlawfully interferes with the possessory interest of a tenant in possession of the premises, the owner is liable to the tenant for the tenant's actual damages or $200, whichever is greater, for each time the unlawful interference occurs, and if the tenant loses possession of the premises, he or she is entitled to regain possession. MCL 600.2918(2).[14]

    - **Unlawful interference defined.** Subject to the exceptions in MCL 600.2918(3) and MCL 600.2918(5),[15] *unlawful interference with a possessory interest* includes any of the following:

        - The owner uses force or threatens to use force. MCL 600.2918(2)(a).

        - The owner removes, retains, or destroys the possessor's personal property. MCL 600.2918(2)(b).

        - The owner changes, alters, or adds locks or security devices to the premises and does not immediately provide the possessor with keys or other unlocking equipment. MCL 600.2918(2)(c).

        - The owner boards up the premises, which prevents or deters the possessor from entering. MCL 600.2918(2)(d).

        - The owner removes doors, windows, or locks from the premises. MCL 600.2918(2)(e).

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[14] The Michigan Court of Appeals concluded that, for purposes of MCL 600.2918, the term *tenant* does not include a lessee's children. Thus, a lessee's children are not entitled to their own award of damages under MCL 600.2918(2). *Nelson v Grays*, 209 Mich App 661, 666 (1995).

[15] See Section 1.2(B)(9) for conduct that does not constitute unlawful interference with a possessory interest.

- The owner causes, by act or omission, the termination or interruption of an essential service that the tenant procured or that the owner is required to furnish, and the termination or interruption of the essential service constitutes constructive eviction.[16] MCL 600.2918(2)(f).

- The owner introduces noise, odor, or another nuisance to the premises. MCL 600.2918(2)(g).

MCL 600.2918 governs claims of constructive eviction or ejection. Michigan has long recognized the theory of constructive eviction. Constructive eviction occurs 'when the act of the landlord is of such a character as to deprive the tenant . . . of the beneficial use and enjoyment of the whole or any part of the demised property, to the extent he is thus deprived.' Constructive eviction can also be found where a landlord fails to supply essential services. [*Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 474-475 (2003) (citations omitted) (holding that, under the facts of the case, MCL 600.2918 did not apply).]

Where a tenant can prove constructive eviction, he or she may be relieved from future liability for rent. See *DeBruyn Bros Realty Co v Photo Lith Plate Service Corp*, 31 Mich App 487, 489-490 (1971), where the rodent infestation and the landlord's failure to provide heat amounted to constructive eviction justifying vacation and no further liability on the lease. However, "'in case of a breach of contract the injured party must make every reasonable effort to minimize the damages suffered[.] . . . [T]he burden is upon the defendant to show in mitigation of the damages claimed that the plaintiff has not used every reasonable effort within his power so to minimize his damages.'" *Froling v Bischoff*, 73 Mich App 496, 499 (1977), quoting *Rich v Daily Creamery Co*, 296 Mich 270, 282 (1941).

"[A] landlord [is prohibited] from resorting to self-help even where the landlord is entitled to possession. Instead the landlord must, on refusal of the tenant to surrender the leased premises, resort to judicial process.[17] To discourage self-help, the Legislature has provided that the tenant may recover treble damages for forcible ejectment under [MCL 600.2918(1)], and actual damages for other unlawful interference under [MCL 600.2918(2)]." *Deroshia v Union Terminal Piers*, 151 Mich App 715, 720 (1986).

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[16] Heat, running water, hot water, electricity, or gas service, for example. MCL 600.2918(2)(f).

[17] The Summary Proceedings Act, MCL 600.5701 *et seq.*, provides landlords with judicial process. See Chapter 4 for more information.

B. Actions and Remedies Available for Loss of Possession or Unlawful Interference With Possessory Interest

MCL 600.2918(6) provides for the following actions when a tenant loses possession of the premises or an owner unlawfully interferes with the tenant's possessory interest in the premises:

- **Claims for loss of possession or unlawful interference with possessory interest.** If a person has lost possession of the premises or an owner has unlawfully interfered with the person's possessory interest in the premises, and that person does not peacefully recover possession of the premises, he or she may initiate summary proceedings under MCL 600.5714(1)(f)[18] to regain possession[19] or may bring a claim for injunctive relief in circuit court. MCL 600.2918(6). The person may join a claim for damages with the claim for possession and the claim for injunctive relief, or a claim for damages may be brought separately. *Id*.

MCL 600.2918(8) specifies the time by which a possession claim or a damage claim must be brought.

- **Timing of a claim for possession or a claim for damages.** Summary proceedings to regain possession of premises must be initiated not more than 90 days after the claim arises or becomes known to the plaintiff. A claim for damages must be brought not more than one year after the claim arises. MCL 600.2918(8).

"As for damages[] under the anti[-]lockout law[,] a tenant who is unlawfully dispossessed is entitled to recover actual damages suffered as a result of the landlord's use of self-help rather than judicial process." *Deroshia*, 151 Mich App at 722. "Actual damages in Michigan, particularly when an intentional wrong is involved, as is the case here, include damages for emotional stress, embarrassment and humiliation. Accordingly, [individuals who are successful in an action filed under MCL 600.2918] are entitled to damages for the emotional stress, embarrassment and humiliation they suffered as a result of the lock[]out." *Shaw v Cassar*, 558 F Supp 303, 316 (ED Mich, 1983) (internal citations omitted).

Unless the lease specifies otherwise, a tenant is not required to pay further rent if he or she is evicted by the landlord. *Central Trust Co v*

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[18] "This remedy is in addition to the remedy of entry permitted under [MCL 600.5711(3)]." MCL 600.5714(1)(f).

[19] **Note:** A tenant with whose possessory interest a landlord has interfered may initiate summary proceedings to regain possession of the premises or may raise the landlord's conduct as a defense to summary proceedings initiated by the landlord. See Chapter 4 for information on summary proceedings. See Chapter 5 for information on defenses.

Wolf, 255 Mich 8, 12-13 (1931); *Longcor v Homeopathic College*, 210 Mich 575, 579-580 (1920).

C. Conduct Not Amounting to Unlawful Interference

Together, MCL 600.2918(3) and MCL 600.2918(5) specify several situations in which an owner's conduct does not amount to an *unlawful* interference with a tenant's possessory interest.

1. Situations Under § 2918(3)

- **Court order.** The owner's actions are court-ordered. MCL 600.2918(3)(a).

  "The plain language of MCL 600.2918(3)[(a)] provides immunity only for actions undertaken pursuant to an order of eviction." *Sickles v Hometown Am, LLC*, 477 Mich 1076 (2007). Actions taken that are "neither necessary to effect the eviction nor incidental to the process of eviction, cannot be said as a matter of law to be within the scope of [an] . . . order of eviction, and hence, may not [be] undertaken pursuant to that order." *Id*.

- **Repairs or inspection.** The owner's interference with possession is temporary and "only as necessary to make needed repairs or inspection and only as provided by law." MCL 600.2918(3)(b).

- **Abandonment of premises.** Current rent is unpaid and "[t]he owner, or a court officer appointed by or a bailiff of the court that issued the court order or the sheriff or a deputy sheriff of the county in which the court is located, believes in good faith that the tenant has abandoned the premises, and after diligent inquiry has reason to believe the tenant does not intend to return[.]" MCL 600.2918(3)(c).

- **Tenant's death.** The owner's interference results from a belief that the tenant is deceased and all of the following requirements are met:

  - **Opportunity to provide contact information for authorized person.** The tenant was informed in writing that he or she could provide the owner with information for an authorized person to contact in case of the tenant's death. MCL 600.2918(3)(d)(*i*). The owner is not responsible if the contact information provided by the tenant is incorrect, nor is the owner responsible if the tenant fails to provide any contact information. *Id.*

- **Unpaid rent.** Current rent is unpaid. MCL 600.2918(3)(d)(*ii*).

- **Belief that tenant is deceased.** "The owner believes in good faith that the tenant has been deceased for at least 18 days and that there is not a surviving tenant." MCL 600.2918(3)(d)(*iii*).

- **No probate estate opened.** "A probate estate has not been opened for the deceased tenant by the public administrator,[20] authorized contact person, or any other person in the county in which the premises are located and the owner has not been notified in writing of the existence of a probate estate opened in another county and of the name and address of the personal representative." MCL 600.2918(3)(d)(*v*).

- **Additional requirements.** When the owner believes that the tenant has been deceased for at least 18 days and that there is no surviving tenant, each of the following must occur "not less than 10 days before the owner reenters to take possession of the premises and dispose of its contents[.]" MCL 600.2918(3)(d)(*iv*).

    - **Attempt to contact authorized person.** If the tenant provided the owner with contact information, "the owner makes a reasonable attempt to contact the authorized person . . . and to request him or her to open a probate estate for the tenant within 28 days after the tenant's death." MCL 600.2918(3)(d)(*iv*)(A). "The owner is not responsible for the authorized person's failure to respond to the notification before the owner's reentry into the premises." *Id*.

    - **Notice of intent to reenter.** "The owner places on the door of the premises a notice indicating the owner's intent to reenter, take possession of the premises, and dispose of its contents after 10 days have elapsed." MCL 600.2918(3)(d)(*iv*)(B).

    - **Public administrator notification.** The owner notifies the appropriate public administrator that he or she believes the tenant is deceased and that unless a probate estate is opened, the owner "intends to reenter to take possession of the premises and dispose of its contents[.]" MCL 600.2918(3)(d)(*iv*)(C). Before expiration of the

[20] "The opening of a probate estate by a public administrator under [MCL 600.2918(3)] is at the sole discretion and must be at the sole expense of the public administrator." MCL 600.2918(4).

ten-day period, the owner must permit a properly identified public administrator to access the premises on request. *Id.*

2. Situations Under § 2918(5)

"An owner's actions do not unlawfully interfere with an occupant's possession of premises if the occupant took possession by means of a forcible entry, holds possession by force, or came into possession by trespass without color of title or other possessory interest." MCL 600.2918(5).

1.4 Possible Criminal Liability for Tenant's Occupation Without Consent

MCL 750.553 provides:

> (1) Except as provided in [MCL 750.553(2)], an individual who occupies a building that is a single-family dwelling or 1 or both units in a building that is a 2-family dwelling and has not, at any time during that period of occupancy, occupied the property with the owner's consent for an agreed-upon consideration is guilty of a crime as follows:
>
> > (a) For a first offense, a misdemeanor punishable by a fine of not more than $5,000.00 per dwelling unit occupied or imprisonment for not more than 180 days, or both.
> >
> > (b) For a second or subsequent offense, a felony punishable by a fine of not more than $10,000.00 per dwelling unit occupied or imprisonment for not more than 2 years, or both.
>
> (2) [MCL 750.553(1)] does not apply to a guest or a family member of the owner of the dwelling or of a tenant.

See also M Crim JI 25.6, which addresses the elements of occupying a dwelling without consent (squatting).

1.5 Liability of Landlord for Injury to Tenant, Invitees of Tenant, or Tenant's Property

A. Injuries Arising Out of the Condition of the Premises

The basic rule in Michigan is that a violation of the state housing law is negligence per se. See *Morningstar v Strich*, 326 Mich 541, 545

(1950), citing *Annis v Britton*, 232 Mich 291, 294 (1925). Thus, there is a clear cause of action under such circumstances, although the tenant is subject to traditional negligence defenses, such as comparative negligence.[21]

1. Landlord's Common-Law Duty to Tenant and Tenant's Guests

Generally, "a land possessor owes a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Kandil-Elsayed v F&E Oil, Inc*, 512 Mich 95, 153 (2023) (quotation marks and citation omitted). "In the context of premises liability, a landowner's duty to a visitor depends on that visitor's status." *Id*. at 111 (quotation marks and citation omitted). "Historically, Michigan has recognized three common-law categories for persons who enter upon the land or premises of another: (1) trespasser, (2) licensee, or (3) invitee." *Id*. at 111 (quotation marks and citation omitted). A *trespasser* enters upon another's land without the owner's consent; a *licensee* enters the land with the owner's consent; an *invitee* enters upon invitation. *Bredow v Land & Co,* 307 Mich App 579, 585-586 (2014), vacated in part on other grounds 498 Mich 890 (2015).[22, 23]

"Consent to enter may be either express or implied," and "[p]ermission may be implied where the owner acquiesces in the known, customary use of property by the public." *Kelsey v Lint*, 322 Mich App 364, 371 (2017) (quotation marks and citation omitted). "Posting a notice may serve to prevent the creation of an implied license[,]" depending on "the context in which a member of the public encountered the signs and the message that those signs would have conveyed to an objective member of the public under the circumstances." *Id.* at 374. "For purposes of determining a landowner's duty in a premises liability case, the entrant's status as an invitee, licensee, or trespasser on the land is considered at the time of injury." *Bredow*, 307 Mich App at 586 (quotation marks and citation omitted).

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[21]The Michigan Supreme Court discontinued use of the doctrine of contributory negligence (a total bar to recovery) and now applies comparative negligence standards. *Placek v Sterling Heights*, 405 Mich 638, 650 (1979). "The effect of this action is to establish contributory negligence as a partial bar to recovery by insuring that any recovery of damages by a plaintiff be reduced to the extent of his or her own negligent contribution to the injury." *Placek,* 405 Mich at 650 n 1.

[22]The Court vacated "that part of the Court of Appeals opinion discussing [the plaintiff's] status as an invitee or a licensee." *Bredow v Land & Co*, 498 Mich 890, 890 (2015).

[23]For more information on the precedential value of an opinion with negative subsequent history, see the note on precedential value at the beginning of this benchbook.

"[A]n invitee is entitled to the highest level of protection under premises liability law." *Kandil-Elsayed*, 512 Mich at 112 (quotation marks and citation omitted). "Generally speaking, invitee status is commonly afforded to persons entering upon the property of another for business purposes." *Id*. at 111. "Land possessors share a special relationship with invitees that generates an affirmative duty to protect." *Id*. at 111 (quotation marks and citation omitted). "Land possessors owe a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Id*. at 112 (quotation marks and citation omitted). "An invitee is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make it safe for the invitee's reception." *Id*. at 111 (cleaned up). "[W]hen a land possessor should anticipate the harm that results from an open and obvious condition, despite its obviousness, the possessor is not relieved of the duty of reasonable care." *Id*. at 104. "[W]hen assessing whether a defendant has breached their duty to take reasonable care to protect invitees from an open and obvious danger, courts should ask whether the possessor should anticipate the harm." *Id*. at 153 (quotation marks and citation omitted). The open and obvious danger doctrine is not part of a land possessor's duty. *Id*. at 104 (the "open and obvious nature of a condition is relevant to breach and the parties' comparative fault").

Under the common law, all invitees are also licensees. "The distinguishing characteristic that fixes the duty depends on whether the licensee's visit is related to the pecuniary interests of the possessor of the land." S*tanley v Town Square Coop*, 203 Mich App 143, 147 (1993). "[T]enants are invitees of their landlords." *Woodbury v Bruckner (On Remand)*, 248 Mich App 684, 696 (2001). In addition, under common law, in common areas over which the landlord has control, a tenant's guests are also the landlord's invitees because the landlord receives a pecuniary benefit from the tenant (rent) in exchange for, among other things, the right to invite guests onto the common areas of the premises. *Stanley*, 203 Mich App at 148. See also *Letvin v Village at Grand Traverse Commons Condo Ass'n*, ___ Mich App ___, ___ (2026) (holding that "a short-term rental guest of a condominium unit owner is an invitee of the condominium association on the common elements of the premises that the association maintains").

An invitee may "lose invitee status[] by acting in a manner inconsistent with the scope and purpose of the invitation."

Bredow, 307 Mich App at 588. "[A]n invitee is expected to use a landowner's premises in the 'usual, ordinary, and customary way,' and . . . when an invitee fails to do so, he or she becomes, at best, a mere licensee." *Id*. at 587-590.

"A landlord or premises owner breaches their duty if they knew or should have known of the dangerous condition but failed to warn their tenants or otherwise protect them." *McNeal v Lincolnshire 2007 Ltd Dividend Housing Ass'n, LLC*, ___ Mich App ___, ___ (2025). "Accordingly, actual or constructive notice of the relevant dangerous condition is an essential element in establishing a premises liability claim." *Id*. at ___ (quotation marks and citation omitted). "Constructive notice is present when the hazard was of such a character, or had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Id*. at ___ (quotation marks and citation omitted). "The plaintiff bears the burden of proving that the landlord or premises owner had actual or constructive notice of the dangerous condition." *Id*. at ___.

"A landowner must not only warn an invitee of any known dangers, but also 'make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards.'" *Letvin*, ___ Mich App at ___, quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597 (2000). "And when a danger is posed to invitees by ice and snow conditions specifically, landowners must take 'reasonable measures . . . within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee.'" *Letvin*, ___ Mich App at ___, quoting *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261 (1975). "In contrast to the question of duty, the question of breach—whether defendants' conduct in the particular case is below the general standard of care—is a question of fact for the jury." *Letvin*, ___ Mich App at ___ (quotation marks and citation omitted).

2. Landlord's Statutory Duty to Trespassers

Effective June 26, 2014, 2014 PA 226 created the Trespass Liability Act, MCL 554.581 *et seq*. Pursuant to the act, "[a] possessor of a fee, reversionary, or easement interest in land, including an owner, lessee, or other lawful occupant, owes no duty of care to a trespasser and is not liable to a trespasser for physical harm caused by the possessor's failure to exercise reasonable care to put the land in a condition reasonably safe

for the trespasser or to carry on activities on the land so as not to endanger trespassers." MCL 554.583(1).

However, under limited circumstances a possessor of land may be subject to liability for physical injury or death to a trespasser. Specifically, MCL 554.583(2) provides that liability may arise if any of the following apply:

> (a) The possessor injured the trespasser by willful and wanton misconduct.
>
> (b) The possessor was aware of the trespasser's presence on the land, or in the exercise of ordinary care should have known of the trespasser's presence on the land, and failed to use ordinary care to prevent injury to the trespasser arising from active negligence.
>
> (c) The possessor knew, or from facts within the possessor's knowledge should have known, that trespassers constantly intrude on a limited area of the land and the trespasser was harmed as a result of the possessor's failure to carry on an activity in that limited area involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety.
>
> (d) The trespasser is a child injured by an artificial condition on the land and all of the following apply:
>
> > (*i*) The possessor knew or had reason to know that a child would be likely to trespass on the place where the condition existed.
> >
> > (*ii*) The possessor knew or had reason to know of the condition and realized or should have realized that the condition would involve an unreasonable risk of death or serious bodily harm to a child.
> >
> > (*iii*) The injured child, because of his or her youth, did not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it.
> >
> > (*iv*) The utility to the possessor of maintaining the condition and the burden of eliminating

> the danger were slight as compared with the risk to the child.
>
> (*v*) The possessor failed to exercise reasonable care to eliminate the danger or otherwise to protect the child.

"[MCL 554.583] does not increase the liability of a possessor of land and does not affect any immunity from or defenses to civil liability established by or available under the statutes or common law of this state to which a possessor of land is entitled." MCL 554.583(3).

3. Landlord's Statutory Duty to Residential Tenants

"In addition to the general common-law duties that a possessor of land owes to invitees, MCL 554.139 imposes further covenants and duties on landlords who lease or license their property to residential tenants." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 636 (2021). MCL 554.139(1) provides:

> In every lease or license of residential premises, the lessor or licensor covenants:
>
> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenant[']s wilful or irresponsible conduct or lack of conduct.[24]

"[N]o notice is required for liability under MCL 554.139." *McNeal v Lincolnshire 2007 Ltd Dividend Housing Ass'n, LLC*, ___ Mich App ___, ___ (2025). "The plain language of MCL 554.139 does not include any indication that notice is required, and there is no ambiguity that requires judicial construction." *McNeal*, ___ Mich App at ___.

[24] Where the repairs are made by an independent contractor the landlord may still be held liable. See *Misiulis v Milbrand Maintenance Corp*, 52 Mich App 494, 503-504 (1974).

"The statutory protection of MCL 554.139(1) arises from the existence of a residential lease and consequently becomes a statutorily mandated term of such lease." *Jeffrey-Moise*, 336 Mich App at 636 (quotation marks and citation omitted).

MCL 554.139(1) does not create "a duty on the part of owners of leased residential property to invitees or licensees generally." *Mullen v Zerfas*, 480 Mich 989, 989 (2007). The statute "establishes duties of a lessor or licensor of residential property to the lessee or licensee of the residential property, most typically of a landlord to a tenant." *Id*. at 990. By the statute's terms, the imposed duties "exist between the contracting parties." *Id.* The *Mullen* Court held that the defendant-landlord did not owe a duty to the plaintiff, the tenant's social guest, under MCL 554.139(1). *Mullen,* 480 Mich at 990.

"A defendant's duty [under MCL 554.139(1)] depends on whether the area is considered part of the 'premises' or whether it is a 'common area.'" *Holder v Anchor Bay Investments, Inc*, ___ Mich App ___, ___ (2024). "Under MCL 554.139(1)(a), a landlord must ensure that *common areas* are fit for their intended use." *Holder*, ___ Mich App at ___ (emphasis added). Additionally, a "lessor's duty to repair under MCL 554.139(1)(b) does not apply to common areas." *Holder,* ___ Mich App at ___ (quotation marks and citation omitted).

"MCL 554.139(1)(a) does not require lessors to maintain a common area in an ideal condition or even in the most accessible condition possible. Rather, the statute requires the lessor to maintain a common area in a condition that renders it fit for its intended use." *Jeffrey-Moise,* 336 Mich App at 637 (citation omitted).

"MCL 554.139(1)(a) requires courts to analyze the fitness of a common area not in the abstract but rather in light of the uses intended by the parties to a residential lease." *Bowerman v Red Oak Mgt Co, Inc*, ___ Mich ___, ___ (2026). "There is . . . a nexus between a common area's fitness and the particular tenants at issue." *Id*. at ___. In *Bowerman*, plaintiff fractured her ankle after stepping into a trench beside the trash-disposal area of an apartment building that "held itself out as specifically housing elderly and disabled tenants." *Id*. at ___ (noting that defendant "retained control over the trash-disposal area and that each of the residents of the building had shared access to the area"). Defendant was accordingly required "to ensure that elderly and disabled tenants had reasonable access to a means of disposing of their trash." *Id*. at ___. However, the trench remained "uncovered and unmarked for several weeks." *Id*. at

___ (observing that defendant's personnel "did not install warnings or visual aids before [plaintiff] was injured"). Plaintiff's proposed property-management expert "opined that the parking lot where the trash-disposal area was located was underlit." *Id*. at ___. That evidence, "paired with photographs of the area, supported [plaintiff's] testimony characterizing the trench as difficult to see in the predawn hours." *Id*. at ___ ("On these facts, reasonable persons could conclude that the trench posed a hazard to the elderly and disabled tenants sufficient to render the trash-disposal area unfit for the use intended by the parties.").

Although "the open and obvious doctrine did not shield [a landlord] from liability under [MCL 554.139]," *Royce v Chatwell Apartments*, 276 Mich App 389, 397-398 (2007), the Michigan Supreme Court overruled this doctrine and the related special-aspects doctrine in *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 153 (2023), "holding instead that when a land possessor should anticipate the harm that results from an open and obvious condition, despite its obviousness, the possessor is not relieved of the duty of reasonable care." *Holder v Anchor Bay Investments, Inc*, ___ Mich App ___, ___ (2024) (quotation marks and citation omitted).

4. Tenant's Common-Law Duty to Tenant's Guests

"Because the tenants do not receive any pecuniary benefit from [their social guests' use of the common areas], those [individuals] invited as social guests of [a] tenant[] are licensees for the purpose of defining the duty their host[] owe[s] them." *Stanley*, 203 Mich App at 147-148. Licensees "assume the ordinary risks associated with their visit." *James v Alberts*, 464 Mich 12, 19 (2001), quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596 (2000).

B. Landlord's Common-Law Duty to Protect Against the Foreseeable Criminal Acts of a Third Party

"[W]hen [a landlord is] put on notice of criminal acts that pose a risk of imminent and foreseeable harm to an identifiable tenant or invitee[,] [the landlord has] a duty to reasonably expedite police involvement." *Bailey v Schaaf*, 494 Mich 595, 600 (2013). "Only when given notice of such a situation is a duty imposed on a landlord. *Notice* is critical to determination whether a landlord's duty is triggered; without notice that alerts the landlord to a risk of imminent harm, [the landlord] may continue to presume that individuals on the premises will not violate the criminal law." *Id*. at 615. However, a company contracted by a landlord to provide

security has no common law duty to protect individuals from criminal acts by third-parties or to involve the police. *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 340 (2014), vacated in part on other grounds 497 Mich 927 (2014).[25] Moreover, the fact that a landlord contracts with a security company to meet its duty to involve the police does not relieve the landlord of direct liability if the security company fails to perform its contractual duty. *Bailey*, 304 Mich App at 354.

"Because a landlord exercises exclusive control over the common areas of the premises, the landlord is the only one who can take the necessary precautions to ensure that the common areas are safe for those who use them." *Stanley*, 203 Mich App at 146.

See *Johnston v Harris*, 387 Mich 569, 572-573 (1972), where the landlord was liable to his tenant who was mugged on the front porch of his dwelling because the landlord failed to provide adequate lighting in this public area and did not maintain the lock to the front door in reasonable repair.

C. Residential Lease Provisions Waiving Liability

Clauses that attempt to exempt a landlord from liability for his or her negligent acts are prohibited and declared void by the Truth in Renting Act, MCL 554.633(1)(e):[26]

> (1) A rental agreement must not include a provision that does 1 or more of the following:
>
> * * *
>
> (e) Exculpates the lessor from liability for the lessor's failure to perform, or negligent performance of, a duty imposed by law. This subdivision does not apply to a provision that releases a party from liability arising from loss, damage, or injury caused by fire or other casualty for which insurance is carried by the other party, under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the insured party under the policy.

[25] For more information on the precedential value of an opinion with negative subsequent history, see the note on precedential value at the beginning of this benchbook.

[26] For more information on the Truth in Renting Act, see Section 2.2.

1.6 Rent Increases

As a general rule, there is no limitation upon the amount of rent that a landlord may charge, except that a landlord may not charge a rent "that is grossly in excess of" rents for similar houses or apartments. MCL 445.903(1)(z) (Consumer Protection Act). See also MCL 554.633(1)(m); MCL 554.633(3) (Truth in Renting Act's prohibition against violating the Consumer Protection Act). However, all local governments in Michigan are prohibited from enacting, maintaining, or enforcing local rent control ordinances or resolutions regarding private residential property, unless the local government has an interest in the property. MCL 123.411(2)-(3).

A. Rent Levels for Individual Tenants in Unsubsidized Housing

There are limitations on the right of a landlord to raise rents. The landlord is bound by the terms of any outstanding lease. Thus, if a tenant has a lease for one year, rents may not be increased during the term of the lease.[27] See MCL 554.633(*l*), which states that a landlord is prohibited from including in a rental agreement any clause that "provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant[,]" with the following exception: A landlord may adjust a rental amount if he or she gives a tenant written notice and the rental amount adjusted is "to cover additional costs in operating the rental premises incurred by the lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water, or sanitary sewer services consumed at the property, or increases in premiums paid for liability, fire, or worker compensation insurance."

B. Rent Increases in Subsidized Housing

Rent levels for individual tenants in most subsidized housing are set by a statutory or regulatory formula and are generally based on income.[28]

[27] Occasionally a lease may provide for interim increases upon the happening of certain events or at the option of a party. The former provision was apparently permitted in *Poli v Jacobs*, 177 Mich 238, 244 (1913). The latter provision has been held not to void the lease for uncertainty, but to require the increases to be reasonable. See *Stancroff v Brown*, 76 Mich App 589, 594 (1977).

[28] See Chapter 3 for a discussion of governmentally subsidized housing.

1.7 Discrimination in Housing

The Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, prohibits any form of housing discrimination on the basis of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status. MCL 37.2502. The ELCRA, which covers housing and other real estate transactions, recognizes and declares the opportunity to obtain housing to be a basic civil right. MCL 37.2102(1).

Under the ELCRA and the Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq.*, a person that is a landlord and owns five or more rental units in Michigan, including all related entities to that person, is prohibited from discriminating against an individual "based on the source of income of an otherwise eligible prospective or current tenant[.]" MCL 37.2502(3)-(4); MCL 554.601c(1)-(2).[29]

In addition to the ELCRA, the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, guarantees the opportunity to obtain housing or other real estate without discrimination because of disability.

Both the PWDCRA and the ELCRA exclude from coverage the rental of housing accommodations in a building providing not more than two families can live there independently where the owner or a member of the owner's immediate family occupies one part of the property, or the rental of a room(s) in a single-family dwelling where the lessor or member of the lessor's immediate family resides in the dwelling. MCL 37.1503; MCL 37.2503(1)(a). The ELCRA alone excludes those dwellings for which the owner is only temporarily leasing the home following his or her immediate prior occupancy of the premises. MCL 37.2503(1)(b). In addition, the ELCRA permits owners to establish senior citizens housing for persons 50 years of age or older. MCL 37.2503(1)(c).

Federal law also precludes discrimination on the basis of race, color, religion, national origin, sex, handicap, and familial status.[30] See 42 USC 3604.

1.8 Repair and Deduct

If a landlord fails to make repairs, the residential tenant may have a statutory right to make repairs and then deduct the cost of repairs from

[29]For more information on the prohibition of discrimination based on the source of income, see Section 1.2(B)(9).

[30]See Section 5.5 for information on the Fair Housing Act and civil rights violations.

the rent. See MCL 125.534(5) (actions to enforce the state housing code). However, the tenant cannot be the cause of the condition. *Id*.

The tenant also has a common-law right to repair and deduct. The permitted use of a repair and deduct remedy at common law and the conditions under which the remedy was permitted were set forth in *Anchor Inn of Mich, Inc v Knopman*, 71 Mich App 64, 67 (1976). The Court stated:

> Where the landlord has covenanted to make repairs and fails to do so, the tenant, after giving reasonable notice to the landlord, may make the repairs and recover the cost of such repairs from the landlord or he may deduct the cost from the rent. Unless the landlord's duty to repair is expressly made conditional upon receipt of notice from the tenant, such duty may arise from the landlord's actual knowledge of the need for repair. The landlord's duty to maintain in good repair an air conditioning unit on the leased premises extends to reimbursing the tenant for [moneys] expended in replacing defective air conditioning apparatus. [*Anchor Inn*, 71 Mich App at 67 (citations omitted).]

1.9 Condominiums

"In Michigan, condominium ownership is governed by the Condominium Act, MCL 559.101 *et seq*." *Janini v London Townhouses Condo Ass'n*, 514 Mich 86, 94 (2024). "A condominium co-owner is 'a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project.'" *Id*. at 94, quoting MCL 559.106(1). "Pursuant to the Condominium Act, the administration of a condominium project is governed by the condominium bylaws. MCL 559.153. Bylaws are attached to the master deed and, along with the other condominium documents, the bylaws dictate the rights and obligations of a co-owner in the condominium." *Janini*, 514 Mich at 94 (quotation marks and citation omitted). "The condominium's common elements are 'the portions of the condominium project other than the condominium units.'" *Id*. at 94, quoting MCL 559.103(7). "If provided by a master deed, condominium co-owners may hold an undivided interest in the common elements, MCL 559.137, and except as otherwise provided by the Act, a condominium co-owner may not alter the common elements." *Janini*, 514 Mich at 94, citing MCL 559.137(5) and MCL 559.147(1).

"[A] condominium association is a separate legal entity that is capable of being sued." *Janini*, 514 Mich at 94. "MCL 559.207 governs causes of action between a condominium co-owner and a condominium association as they relate to violations of a condominium project's

governing documents." *Janini*, 514 Mich at 96, citing MCL 559.207 ("A co-owner may maintain an action against the association of co-owners and its officers and directors to compel these persons to enforce the terms and provisions of the condominium documents."). See also MCL 559.215(1) ("A person . . . adversely affected by a violation of or failure to comply with this act, rules promulgated under this act, or any provision of an agreement or a master deed may bring an action for relief in a court of competent jurisdiction.").

"While the statutory scheme is silent as to whether a common-law duty is afforded to a condominium co-owner from a condominium association, nothing in the Condominium Act clearly prohibits the application of the common law to these circumstances." *Janini*, 514 Mich at 95. "The fact that the Legislature sought to codify a remedy for the violation of a condominium project's governing documents does not lead us to believe that the Legislature necessarily intended to displace common-law causes of action between a condominium co-owner and a condominium association." *Id*. at 96 (stating that "the codification of a distinct remedy under MCL 559.207, which provides guidance as to when an injunction to compel enforcement of the condominium documents is appropriate, does not expressly or impliedly eliminate remedies available under the common law").

"What the Legislature said in the Condominium Act is that condominium co-owners can pursue an action that compels a condominium association to enforce the provisions of the governing documents." *Janini*, 514 Mich at 97. "The Legislature has *not* said that the codification of this distinct cause of action is intended to displace common-law causes of action, such that a condominium association is effectively immune from tort liability." *Id*. at 97 (stating that "whether a condominium co-owner may maintain a premises-liability suit against a condominium association depends on whether a special relationship exists between the co-owner and the condominium association as the owner, occupier, or possessor of the land, such that the law will impose a duty of care on the condominium association").

A. Co-Owner's Premises-Liability Action Against Condominium Association

"The proper inquiry when considering the duty owed in a premises-liability action is who has possession and control over the land where a person was injured, not merely who owns the land." *Janini*, 514 Mich at 90. "Historically, Michigan has recognized that the duty a possessor of land owes to a person who enters the land depends on whether the visitor is classified as an invitee, a licensee, or a trespasser." *Id*. at 97. "A licensee is a person who is privileged to enter the land of another by virtue of the possessor's consent." *Id*. at 98 (quotation marks and citation omitted). "A trespasser is a person

who enters upon another's land, without the landowner's consent." *Id*. at 98 (quotation marks and citation omitted).

"An invitee is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make it safe for the invitee's reception." *Id*. at 97 (cleaned up). "Invitee status is commonly afforded to persons entering upon the property of another for business purposes." *Id*. at 97-98 (cleaned up). "[W]hen the master deed and bylaws governing a condominium complex provide that the condominium association is responsible for maintaining the common areas and the condominium's co-owners lack possession and control over those common areas, a condominium co-owner using the condominium complex's common areas and elements is an invitee." *Id*. at 90. "In such circumstances, a condominium association owes a condominium co-owner a common-law duty to exercise reasonable care to protect them from dangerous conditions in the common areas." *Id*. at 90.

"[A] short-term rental guest of a condominium unit owner is an invitee of the condominium association on the common elements of the premises that the association maintains." *Letvin v Village at Grand Traverse Commons Condo Ass'n*, ___ Mich App ___, ___ (2026). "For just as part of the rent paid by a tenant to a landlord is the consideration for the right to invite others onto the property, part of the fee paid to a condominium association like defendant is the consideration for maintaining the common areas (such as the parking lot) in safe condition for the unit owners and their guests." *Id*. at ___ (quotation marks and citations omitted). "*Janini* abrogated *Gabrielson* [*v Woods Condo Ass'n, Inc*, 349 Mich App 478 (2024)], with respect to the duty owed by a condominium association to renters of individual units who are injured in common areas maintained by the association." *Letvin*, ___ Mich App at ___ (concluding that *Stanley v Town Square Coop*, 203 Mich App 143 (1993), was "the controlling precedent" because it "was decided before *Gabrielson*").

"An invitee is entitled to the highest level of protection under premises liability law." *Id*. at 98 (cleaned up). "Land possessors owe a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land." *Id*. at 98. "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Id*. at 98 (quotation marks and citation omitted). "The law imposes no additional duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Id*. at 98 (quotation marks and citation omitted). "The landowner owes

no duty to the trespasser except to refrain from injuring him by wilful and wanton misconduct." *Id*. at 98 (quotation marks and citation omitted). Notably, "these special relationships are predicated on an imbalance of control, where one person entrusts himself to the control and protection of another, with a consequent loss of control to protect himself." *Id*. at 98 (cleaned up) (stating that "the party in possession is in a position of control, and normally best able to prevent any harm to others") (quotation marks and citation omitted).

"[T]he practical reality of the relationship between a condominium co-owner and a condominium association . . . is often like that of a landlord and a tenant." *Id*. at 100 ("recogniz[ing] that a 'special relationship' exists between a landlord and its tenant"). "[C]ondominium co-owners often do not independently exercise exclusive ownership over the common elements." *Id*. at 99. "Rather, condominium co-owners cede control over those common elements to the condominium association, and it becomes the responsibility of the condominium association to maintain those common elements." *Id*. at 99. Accordingly, "while condominium co-owners have an undivided interest in the common elements, that interest does not necessarily amount to *control* over the common elements." *Id*. at 99 (citations omitted). "[T]he practical reality [was] that while plaintiff [in *Janini*] was a co-owner of the common elements, he did not enjoy exclusive control over them, which one typically associates with land possession." *Id*. at 99-100.

Next, the *Janini* Court "consider[ed] whether the special relationship between plaintiff and defendant is one of an invitee and a land possessor." *Id*. at 101. Courts "consider whether an individual enters the land by invitation" in order to determine "invitee status." *Id*. at 101. "Invitee status is commonly afforded to persons entering upon the property of another for business purposes." *Id*. at 101 (cautioning that "the phrase 'the land of another' does not necessarily equate to 'the land of another *owner*'"). Instead, "to sustain a premises-liability case, the land on which a person is injured is land over which another person or entity has possession and control." *Id*. at 104 (reiterating "that the proper inquiry when considering the duty owed in a premises-liability context is who holds possession and control over the land where a person was injured and not merely who owned the land").

In *Janini*, the condominium co-owners were in a business relationship with the condominium association because (1) they "paid money to the condominium association to maintain the common elements for their own use and enjoyment," (2) their "ability to purchase a condominium unit, along with their rights to use the common elements, [were] subject to the condition that [they]

pay these dues to the condominium association and cede their individual authority over the common elements to the association," and (3) they "were assured that the premises would be made safe for [their] use." *Id*. at 101, 102. Considering these circumstances, "the Court of Appeals erroneously determined that a condominium co-owner is neither a licensee nor an invitee and thus is precluded from bringing a premises-liability claim against a condominium association simply because the condominium co-owner holds an interest in those common elements." *Id*. at 90. The *Janini* Court held that the condominium co-owner "was an invitee when he entered the condominium's common area and that defendant owed him a duty to exercise reasonable care to protect him from dangerous conditions on the land." *Id*. at 105 (holding that the co-owner could maintain a premises-liability action against the condominium association under this framework).

B. Conversion Condominium Projects

The Condominium Act has as its focus the protection of potential unit purchasers, developers and co-owners.[31] Local ordinances may exist that provide additional protection to tenants in a conversion project.

The developer of a conversion condominium project is required to give notice to all existing tenants of any unit in the project that is proposed to be converted to a condominium. MCL 559.204(2). The notice must be physically delivered or sent by first-class mail to each unit and addressed to the unit's tenant. MCL 559.204(2)(d). In addition, no tenancy, whether month-to-month or otherwise, can be terminated by the lessor without cause within 120 days of such notice.[32] *Id*. However, a tenant who receives notice of a proposed conversion "may terminate his or her tenancy, at any time, if notice of termination of tenancy is given to the developer not less than 60 days before the date of termination." MCL 559.204(3).

At the same time notice is given under MCL 559.204, the developer must also "notify each existing [qualified] tenant[33] . . . of the right to elect an extended lease arrangement and the terms and conditions of an extended lease arrangement." MCL 559.204b(3). A

[31]For more information, see the Department of Licensing and Regulatory Affairs (LARA) Condominium Buyer's Handbook. The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[32]This time period is extended to one year if the tenant meets certain requirements set out in MCL 559.204a. The person must (1) be at least 65 years old, or paraplegic, quadriplegic, hemiplegic, or blind as [*blind*] is defined in MCL 206.504(1); (2) be a resident of the building; and (3) not qualify for an extended lease arrangement under MCL 559.204b.

[33]Tenants who are qualified senior citizens and qualified persons with disabilities.

qualified senior citizen or a qualified person with a disability must communicate his or her election of an extended lease arrangement to the developer within 60 days of the receipt of notice. *Id*.

An extended lease arrangement must be in writing and must comply with MCL 559.204b(4)(a)-(d).

Except as provided in MCL 559.204d,[34] a qualified senior citizen is eligible for a year-to-year renewal of the extended lease arrangement. MCL 559.204b(5). The period of renewal is based upon the age of the resident; advancing age increases the number of year-to-year renewals allowed. See *id*:

- A person who is between the ages of 65 and 69 is eligible for year-to-year renewals for four years, subject to a two-year limitation where sufficient loan funds for the developer are not available from the state housing development authority. MCL 559.204b(5)(a).
- A person who is between the ages of 70 and 74 may renew year to year for six years. MCL 559.204b(5)(b).
- A person who is between the ages of 75 and 79 may renew year to year for seven years. MCL 559.204b(5)(c).
- A person who is 80 years of age or older may renew year to year for 10 years. MCL 559.204b(5)(d).

"Except as provided in [MCL 559.204d[35]], a person who is a qualified person with disabilities on the date of receipt of the notice required under [MCL 559.204(2)] may renew a lease subject to an extended lease arrangement year to year for 4 years; or, if the qualified person with disabilities is also a qualified senior citizen, for the number of years provided in [MCL 559.204b(5)], whichever is greater." MCL 559.204b(6).

The Condominium Act prohibits the assignment, devise, sublease, or transfer of extended lease arrangements, MCL 559.204b(8), and provides for automatic termination upon the death of a qualified senior citizen or qualified person with disabilities, MCL 559.204b(9). In addition,

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[34] MCL 559.204d contains statutory provisions excepting developers who met certain criteria at specified times in 1980 from having to offer extended lease arrangements under MCL 559.204b for longer than one year.

[35] MCL 559.204d contains statutory provisions excepting developers who met certain criteria at specified times in 1980 from having to offer extended lease arrangements under MCL 559.204b for longer than one year.

> a surviving spouse of a qualified senior citizen who is 65 years of age or older at the time the qualified senior citizen dies shall have the right to execute a lease under an extended lease arrangement subject to the right of renewal, and other conditions, that applied to the deceased. A surviving spouse who does not qualify for an extended lease shall have 6 months in which to vacate the premises, during which time the conditions of the deceased spouse's extended lease shall apply, except for the right of renewal. [MCL 559.204b(9).]

With respect to condominium conversions, Congress adopted the Condominium and Cooperative Conversion Protection and Abuse Relief Act of 1980, 15 USC 3601 *et seq.*, which requires state and local governments to provide existing tenants with adequate notice so that they have the first opportunity to purchase units in rental projects that are being converted. 15 USC 3605.

1.10 Cooperatives

"A housing cooperative is formed when people join with each other on a democratic basis to own or control the housing and/or related community facilities in which they live. Usually they do this by forming a not-for-profit cooperative corporation. . . . Cooperative members own a share in [the] corporation that owns or controls the building(s) and/or property in which they live. Each shareholder is entitled to occupy a specific unit and has a vote in the corporation."[36]

In Michigan, a consumer housing cooperative is a nonprofit corporation incorporated according to Michigan's corporation laws and Chapter 5 of the State Housing Development Authority Act, MCL 125.1471—MCL 125.1475. MCL 125.1411(*l*). "A cooperative corporation is not a business corporation in the ordinary contemplation; rather, it is a vehicle for the common ownership of property, to enable the occupants, the stockholders of the cooperative, to own, manage, and operate residential apartments without anyone profiting therefrom." Am Jur 2d, Condominiums and Cooperative Apartments, § 59.

Cooperative corporations in Michigan are largely governed by the provisions of the Michigan General Corporation Act, MCL 450.98 *et seq*. They are also governed by the Consumer Protection Act (CPA), MCL 445.901 *et seq.*,[37] and the Truth in Renting Act (TRA), MCL 554.631 *et seq*.[38] However, they are not subject to the Michigan Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq.*,[39] which governs security

[36]For more information about housing cooperatives, see http://coophousing.org/.

[37]See Section 1.2(B)(9) for more information on the Consumer Protection Act.

deposits. *Penokie v Colonial Townhouses Coop, Inc*, 140 Mich App 740, 741 (1985).

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1.11 Mobile Homes

A. Taking Up Residence in a Mobile Home Park

Many past practices in the mobile home industry are now illegal under the Mobile Home Commission Act (MHCA), MCL 125.2301 *et seq*. It is illegal for a mobile home park owner to engage in unfair or deceptive practices as defined in MCL 125.2328:

> (1) An owner or operator of a mobile home park or seasonal mobile home park shall not engage, or permit an employee or agent to engage, in any of the following unfair or deceptive methods, acts, or practices:
>
> (a) Directly or indirectly charging or collecting from a person an entrance fee.
>
> (b) Requiring a person to directly or indirectly purchase a mobile home from another person as a condition of entrance to, or lease or rental of, a mobile home park or seasonal mobile home park space.[40]
>
> (c) Directly or indirectly charging or collecting from a person a refundable or nonrefundable exit fee.
>
> (d) Requiring or coercing a person to purchase, rent, or lease goods or services from another person as a condition of any of the following:
>
> (*i*) Entering into a park or lease.

[38] See Section 2.2 for more information on the Truth in Renting Act.

[39] See Section 2.1 for more information on the Landlord-Tenant Relationship Act.

[40] The on-site sale of mobile homes is governed by MCL 125.2328 and MCL 125.2328a.

(*ii*) Selling a mobile home through the park owner or operator, or his or her agent or designee upon leaving a mobile home park or seasonal mobile home park.

(*iii*) Renting space in a mobile home park or seasonal mobile home park.

(e) Directly or indirectly charging or collecting from a person money or other thing of value for electric, fuel, or water service without the use of that service by a resident or tenant being first accurately and consistently measured, unless that service is included in the rental charge as an incident of tenancy.

(f) Conspiring, combining, agreeing, aiding, or abetting in the employment of a method, act, or practice that violates this Act.

(g) Renting or leasing a mobile home or site in a mobile home park or seasonal mobile home park without offering a written lease.

(h) Subject to [MCL 125.2328a], prohibiting a resident from selling his or her mobile home on-site for a price determined by that resident, if the purchaser qualifies for tenancy and the mobile home meets the conditions of written park rules or regulations. This subdivision does not apply to seasonal mobile home parks.

(i) Subject to reasonable mobile home park or seasonal mobile home park rules governing the location, size, and style of exterior television antenna, prohibiting a person from installing or maintaining an exterior television antenna on a mobile home within the park unless the mobile home park or seasonal mobile home park provides park residents, without charge, a central television antenna for UHF-VHF reception.

(2) A tenant of a mobile home park or seasonal mobile home park may bring an action on his or her own behalf for a violation of this section.

(3) If the commission has reason to suspect that the owner of a mobile home park or seasonal mobile home park is engaged in conduct that violates existing water utility tariffs or qualifies the owner of a mobile home

park or seasonal mobile home park for regulation as a water utility, the commission shall promptly send a written report of the alleged violation to the Michigan public service commission.

B. Eviction

Termination of tenancies in mobile home parks is governed by MCL 600.5771 to MCL 600.5785.

1. "Just Cause"

A tenancy in a mobile home park may not be terminated without *just cause*, which is statutorily defined as one or more of the following:

> (a) Use of a mobile home site by the tenant for an unlawful purpose;
>
> (b) Failure by the tenant to comply with a lease agreement by which the tenant holds the premises or with a rule or regulation of the mobile home park, adopted pursuant to the lease or agreement, which rule or regulation is reasonably related to any of the following:
>
> > (*i*) The health, safety, or welfare of the mobile home park, its employees, or tenants.
> >
> > (*ii*) The quiet enjoyment of the other tenants in the mobile home park.
> >
> > (*iii*) Maintaining the physical condition or appearance of the mobile home park or the mobile homes located in the mobile home park to protect the value of the mobile home park or to maintain its aesthetic quality or appearance.
>
> (c) A violation by the tenant of rules promulgated by the Michigan department of public health under . . . [MCL] 125.2306 [*et seq*].
>
> (d) Intentional physical injury by the tenant to the personnel or other tenants of the mobile home park, or intentional physical damage by the tenant to the property of the mobile home park or of its other tenants.

(e) Failure of the tenant to comply with a local ordinance, state law, or other governmental rule or regulation relating to mobile homes.

(f) Failure of the tenant to make timely payment of rent or other charges under the lease or rental agreement by which the tenant holds the premises on 3 or more occasions during any 12-month period, for which failure the owner or operator has served a written demand for possession for nonpayment of rent pursuant to [MCL 600.5714(1)(a)[41]] and the tenant has failed or refused to pay the rent or other charges within the time period stated in the written demand for possession. The written demand for possession shall provide a notice to the tenant in substantially the following form: "Notice: Three or more late payments of rent during any 12-month period is just cause to evict you." Nothing in this subdivision shall prohibit a tenant from asserting, and the court from considering, any meritorious defenses to late payment of rent or other charges.

(g) Conduct by the tenant upon the mobile home park premises which constitutes a substantial annoyance to other tenants or to the mobile home park, after a notice and an opportunity to cure.

(h) Failure of the tenant to maintain the mobile home or mobile home site in a reasonable condition consistent with the aesthetics appropriate to the park.

(i) Condemnation of the mobile home park.

(j) Changes in the use or substantive nature of the mobile home park.

(k) Public health and safety violations by the tenant. [MCL 600.5775(2).]

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[41] MCL 600.5714 governs summary eviction proceedings and holdovers by tenants. See Chapter 4 for information on summary proceedings. MCL 600.5714(1)(a) states:

> (1) A person entitled to possession of premises may recover possession by summary proceedings in the following circumstances:
>
> (a) When a person holds over premises after failing or refusing to pay rent due under the lease or agreement by which the person holds the premises within 7 days from the service of a written demand for possession for nonpayment of the rent due. For the purposes of this subdivision, rent due does not include any accelerated indebtedness because of a breach of the lease under which the premises are held.

2. Tenant's Response to Demand for Possession

Within ten days of receiving a demand for possession for just cause, the tenant has a right to request by certified or registered mail an in-person conference with the owner or operator of the park, or the owner's or operator's representative. MCL 600.5777. The owner or operator must schedule a time and date for the conference within 20 days of the tenant's request. *Id.* Counsel may accompany the tenant to the conference. *Id.*[42]

3. Continuing Duty to Pay Rent

The tenant is expected to make all payments (rent and other charges) that become due during this time. MCL 600.5779. Acceptance of such payments by the owner or operator does not prejudice the eviction proceeding. *Id*. If a tenant does not timely make a payment, "the owner or operator may proceed under [MCL 600.5714(1)(a)] without prejudice to the maintenance of the just cause termination action." MCL 600.5779.

4. Termination of Tenancy

If a tenancy is terminated, the tenant has 90 days from the judgment date denying him or her possession to sell or move the mobile home, "except that the time period shall be extended to 90 days after the mobile home park owner or operator denies tenancy to a person making a bona fide offer to purchase the mobile home within the 90-day period or any proper extension of the time period under this subdivision." MCL 600.5781(a). In addition, the tenant is expected to make all payments (rent and other charges[43]) during the initial 90-day period, as well as during any extension period. MCL 600.5781(b). "Failure to timely pay all rent or other charges shall entitle the owner or operator to seek an immediate writ of restitution." *Id.*

An owner or operator "may disconnect all mobile home park-supplied utility services" after 10 days have passed since the date of the judgment of possession. MCL 600.5781(c). During this same time period, "the tenant shall provide the owner or operator with proof that the mobile home has been properly

[42]**NOTE:** This does not affect the owner's right to initiate summary proceedings. See Chapter 4.

[43]For purposes of MCL 600.5781, "'rent and other charges' does not include liquidated damages awarded under [MCL 600.5785]." MCL 600.5781(b).

winterized by a licensed mobile home installer and repairer." MCL 600.5781(d). Failure to do so "entitle[s] the owner or operator to seek an immediate writ of restitution." *Id.*

Both the tenant and the owner or operator have responsibilities to maintain the mobile home and mobile home site. See MCL 600.5781(e)-(f). The tenant must "continue to maintain the mobile home and mobile home site in accordance with the rules and regulations of the mobile home park." MCL 600.5781(e). However, the mobile home park must "provide the tenant with reasonable access to the mobile home and the mobile home site for the purpose of maintaining the mobile home and mobile home site and selling the mobile home." MCL 600.5781(f).

Every judgment for possession resulting from termination for just cause must "set forth the right of a tenant to sell a mobile home on[-]site, the conditions of that right, and the consequences of a tenant's failure to meet those conditions, all as prescribed in [MCL 600.5781]." MCL 600.5783.

5. Damages to Prevailing Party

A prevailing party is entitled to liquidated damages under MCL 125.2328c, if a provision requiring liquidated damages is included in the lease or rental agreement governing the tenancy or rules adopted pursuant to the lease in an action to terminate a tenancy. MCL 600.5785. Liquidated damages may be no more than $500 for an action in district court and no more than $300 for each appellate level. MCL 125.2328c(2). Liquidated damages must not be construed as a penalty. *Id.*; MCL 600.5785. Some mobile home tenants served with a 30-day notice to terminate will have a defense. See MCL 600.5720, which prohibits a termination of tenancy for certain reasons, including as a penalty for a tenant's efforts to secure or enforce his or her legal rights, in retaliation against a tenant for reporting a health or safety code or ordinance violation, or as retribution for a tenant's membership in a tenant organization.

In addition, tenants of a mobile home park are authorized by the MHCA to bring an action on their own behalf for a violation of MCL 125.2328 (prohibition against unfair or deceptive methods, acts, or practices). MCL 125.2328(2). Any condition binding a person to waive compliance with the requirement of a written lease, or any other provisions of the MHCA, is void. MCL 125.2332.

Finally, the Truth in Renting Act (TRA), MCL 554.631 *et seq.*,[44] specifically applies to mobile homes and the text in this

benchbook relative to defenses under the TRA should be consulted in these cases.[45] Similarly, the Michigan Consumer Protection Act, MCL 445.901 *et seq.*,[46] applies to the leasing of mobile homes.

C. Mobile Home Conversion Condominium Projects

Mobile home conversion condominium projects must comply with the Condominium Act and particularly with MCL 559.221 to MCL 559.227, which specifically address mobile home conversion condominium projects. MCL 559.221.

> The developer of a mobile home conversion condominium project shall notify each existing tenant of any mobile home in the proposed mobile home conversion condominium project that the mobile home park is proposed to be converted to a condominium project. The notice shall be physically delivered or sent by first[-]class mail to each unit addressed to the tenant. Except as provided in [MCL 559.222b], a tenancy in a mobile home that is proposed to be a conversion condominium, whether month to month or otherwise, shall not be terminated without cause until 1 year after receipt of the notice required under this section, or until termination of the lease, whichever is later. [MCL 559.222a.]

In addition, MCL 559.222b states:

> (1) A developer shall notify each existing qualified senior citizen, at the same time notice is given under [MCL 559.222a], of the right to elect an extended lease arrangement for the lot on which the senior citizen's mobile home is located, and the terms and conditions of an extended lease arrangement. A qualified senior citizen shall, within 60 days after receipt of notice under this subsection, communicate the election of an extended lease arrangement to the developer.
>
> (2) An extended lease arrangement shall be in writing and shall provide for all of the following:
>
> > (a) A written lease for the lot on which the senior citizen's mobile home is located, renewable from

[44]See Section 2.2, the Truth in Renting Act.

[45]See Section 2.2, the Truth in Renting Act.

[46]See Section 1.2(B)(9) for more information on the Consumer Protection Act.

year to year for the number of years specified in subsection (3).

(b) That the number of years for which a lease subject to an extended lease arrangement may be renewed shall be measured from the date on which the election of an extended lease arrangement is communicated to the developer.

(c) That any increase in the rent during the time the mobile home lot is a restricted mobile home lot will not be an unreasonable increase beyond the fair market rent for a comparable mobile home lot.

(d) That upon request of the lessee of a restricted mobile home lot, the lessor shall disclose all information used in determining a reasonable rent increase based upon the standard in subdivision (c).

(3) The number of years for which a qualified senior citizen may renew a lease subject to an extended lease arrangement shall be determined by his or her age on the date of receipt of the notice required under subsection (1), as follows:

(a) A person who is not less than 65 years of age and not more than 69 years of age may renew year to year for 4 years.

(b) A person who is not less than 70 years of age and not more than 74 years of age may renew year to year for 6 years.

(c) A person who is not less than 75 years of age and not more than 79 years of age may renew year to year for 7 years.

(d) A person who is 80 years of age or more may renew year to year for 10 years.

(4) A developer who enters into an extended lease arrangement or the developer's successor shall notify both of the following of each extended lease arrangement:

(a) The Michigan state housing development authority of each qualified senior citizen who elects an extended lease arrangement as soon as practicable after the election is communicated to the developer.

> (b) The office of services to the aging created in . . . [MCL 400.585], 18 months before the expiration of the extended lease arrangement for a qualified senior citizen who is in the age categories described in subsection (3)(c) and (d).

(5) A lease subject to an extended lease arrangement shall not be assigned, devised, subleased, or transferred by the qualified senior citizen.

(6) A lease subject to an extended lease arrangement shall terminate automatically upon the death of the qualified senior citizen. However, a surviving spouse of a qualified senior citizen who is 65 years of age or older at the time the qualified senior citizen dies shall have the right to execute a lease under an extended lease arrangement subject to the right of renewal, and other conditions, that applied to the deceased. A surviving spouse who does not qualify for an extended lease shall have 6 months in which to vacate the mobile home lot, during which time the conditions of the deceased spouse's extended lease shall apply, except for the right of renewal.

(7) A lessor who violates the rental restrictions of subsection (2)(c) shall be liable to the qualified senior citizen in an amount equal to 3 times the amount by which the rental payments exceed the fair market rent, to be recovered in a civil action.

(8) The lessor in an extended lease arrangement may recover possession of a restricted mobile home lot for nonpayment of rent or other grounds for recovery of possession under [MCL 600.5701 to MCL 600.5759[47]].

(9) A restricted mobile home lot may be transferred to any person by the lessor in an extended lease arrangement, subject to the extended lease arrangement.

[47] The Summary Proceedings Act. See Chapter 4.

Chapter 2: Specific Landlord-Tenant Laws

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2.1 Landlord-Tenant Relationship Act[1]

The practices and procedures relating to the collection, holding, and return of a tenant's security deposit are regulated by the Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq*. The LTRA details the parties' duties and obligations with regard to the amount of a tenant's security deposit, its use, the transmission of information between the landlord and the tenant, and the settlement of disputes. The LTRA also briefly addresses special circumstances of early lease termination.

Unless otherwise noted in the applicable statutes, parties to a rental agreement cannot waive the requirements of the LTRA. MCL 554.606.

A. General Security Deposit Requirements

1. Collecting a Deposit

A landlord cannot collect a security deposit from a residential tenant

> unless he notifies the tenant no later than 14 days from the date a tenant assumes possession in a written instrument of the landlord's name and address for receipt of communications under [the LTRA], the name and address of the financial institution or surety required by [MCL 554.604] and the tenant's obligation to provide in writing a forwarding mailing address to the landlord within 4 days after termination of occupancy. MCL 554.603.

2. Amount of the Deposit

"A security deposit . . . shall not exceed 1 1/2 months' rent." MCL 554.602. However, "the first full rental period of the lease agreement" may not be made part of the security deposit. MCL 554.601(d).

"[E]xcept for the first month's rent, [a] landlord cannot require any tenant to pay any portion of rent prior to the first day of the rental period to which the rent is applied, unless the prepayment is a security deposit which satisfies the [LTRA]." *Sobel v Trony Associates*, 91 Mich App 294, 297-298 (1979).

[1] For assistance in understanding and managing landlord-tenant matters see http://michiganlegalhelp.org/self-help-tools/housing.

3. Use of the Deposit

The LTRA requires the landlord to deposit the tenant's security deposit in a "regulated financial institution." MCL 554.604(1). The name and address of that institution must be given to the tenant. MCL 554.603.

a. Posting Bond—Use For Any Purpose

The security deposit may be used by the landlord only if a bond is posted in its place, insuring that the money will be available for the return of a tenant's deposit. MCL 554.604(1). If that is done, the money may be withdrawn and used by the landlord for whatever purposes he or she desires, even though the deposit legally remains the property of the tenant until termination of the lease. MCL 554.604(1); MCL 554.605. MCL 554.605 states:

> For the purposes of [the LTRA] and any litigation arising thereunder, the security deposit is considered the lawful property of the tenant until the landlord establishes a right to the deposit or portions thereof as long as the bond provision is fulfilled, the landlord may use this fund for any purposes he desires.

b. Retaining Deposit After Damage to Rental Property

"Under the [LTRA], a security deposit may be used solely (1) to reimburse a landlord for actual damages to a rental unit, (2) to pay for rent due under the lease, (3) to pay utility bills, or (4) to compensate the landlord for rent lost from a tenant's premature termination of a lease." *Hovanesian v Nam*, 213 Mich App 231, 235 (1995). See also MCL 554.607.

If a landlord determines that there are damages to the rental unit, the landlord must follow a statutory process of notifying the tenant of these damages. This notice represents a complete accounting by the landlord of any portion of the security deposit not refunded to the tenant. MCL 554.609 states:

> (1) In case of damage to the rental unit or other obligation against the security deposit, the landlord shall mail to the tenant, within 30 days after the termination of occupancy, a

> notice of damages that contains an itemized list of damages claimed for which the security deposit may be used as provided in [MCL 554.607], including the estimated cost of repair of each damaged property item and the amounts and bases on which the landlord intends to assess the tenant.
>
> (2) Except as otherwise provided in [MCL 554.609(3)], the notice of damages must be accompanied by a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord and must not include any damages that were claimed on a previous termination inventory checklist prior to the tenant's occupancy of the rental unit.
>
> (3) Beginning [September 21, 2026], a notice of damages may not be accompanied by a check or money order as described in [MCL 554.609(2)] if the landlord transmits the difference between the damages claimed and the amount of the security deposit held by the landlord as described in [MCL 554.609(2)] to the tenant through direct deposit or electronic transfer to a bank account, or to an internet or mobile payment account or application. A landlord that complies with [MCL 554.609(3)] must deposit the amount determined in accordance with [MCL 554.609(2)] into the tenant's account in a financial institution or internet or mobile payment account or application within 10 days after mailing the notice of damages.
>
> (4) The notice of damages must include the following statement in 12 point boldface type that is at least 4 points larger than the body of the notice: "You must respond to this notice by mail within 7 days after receipt of the notice of damages, otherwise you will forfeit the amount claimed for damages."

A landlord's failure to notify a tenant within 30 days after the tenant has vacated the rental unit of any damages as required by MCL 554.609, "constitutes agreement by the landlord that no damages are due and he shall remit to

the tenant immediately the full security deposit." MCL 554.610.

For purposes of MCL 554.607(a), *actual damages* do not include ordinary cleaning costs. *Smolen v Dahlmann Apts, Ltd*, 127 Mich App 108, 115 (1983). The Court stated: "While a grimy kitchen wall, a soiled carpet and a stained couch are all unattractive, the wall, carpet and couch themselves have not been injured. Thus, the Legislature could not have intended that a rental unit needing cleaning has suffered 'damages' under the statute." *Smolen*, 127 Mich App at 115.

If the tenant responds to the landlord's notice of damages, he or she must "indicat[e] in detail his agreement or disagreement to the damage charges listed." MCL 554.612. For purposes of MCL 554.609 and MCL 554.612, the date of mailing is considered the date the tenant responded.

A tenant who fails to respond only forfeits the amount of claimed damages allowable under MCL 554.607; he or she does not forfeit any amount wrongfully retained by the landlord. *Smolen*, 127 Mich App at 118-119.

B. Required Transmittal of Information

In addition to requiring the landlord to send notice of his or her intent to collect a security deposit, MCL 554.603, the LTRA requires the tenant to notify the landlord of an address at which the tenant may be reached after termination of his or her occupancy, MCL 554.611. MCL 554.611 states that "[t]he tenant shall notify the landlord in writing at the address given under [MCL 554.603[2]] within 4 days after termination of his occupancy of an address at which communications pursuant to [the LTRA] may be received."

A tenant's failure to provide a forwarding address "relieves the landlord of the requirement of notice of damages but does not prejudice a tenant's subsequent claim for the security deposit." MCL 554.611. See *Oak Park Village v Gorton*, 128 Mich App 671, 677 (1983).

However, a tenant is relieved of his or her obligation to provide a forwarding address if the landlord's notice under MCL 554.603 does not

[2]MCL 554.611 refers to MCL 554.604, but the address to which MCL 554.611 is directed is the address provided in MCL 554.603.

include the following statement in 12 point boldface type which is at least 4 points larger than the body of the notice or lease agreement: "You must notify your landlord in writing within 4 days after you move of a forwarding address where you can be reached and where you will receive mail; otherwise your landlord shall be relieved of sending you an itemized list of damages and the penalties adherent to that failure." [MCL 554.603.]

C. Inventory Checklists

Notification of the condition of property at the time of entry is through the use of inventory checklists. See MCL 554.608. The checklists, to be provided at the time the tenant assumes possession, should include all items in the rental unit and notice that the tenant can request copies of the completed checklists of the previous tenant. MCL 554.608.

MCL 554.608 states:

> (1) The landlord shall make use of inventory checklists both at the commencement and termination of occupancy for each rental unit which detail the condition of the rental unit for which a security deposit is required.
>
> (2) At the commencement of the lease, the landlord shall furnish the tenant 2 blank copies of a commencement inventory checklist, which form shall be identical to the form used for the termination inventory checklist. The checklist shall include all items in the rental unit owned by the landlord including, but not limited to, carpeting, draperies, appliances, windows, furniture, walls, closets, shelves, paint, doors, plumbing fixtures and electrical fixtures.
>
> (3) Unless the landlord and tenant agree to complete their inventory checklist within a shorter period, the tenant shall review the checklist, note the condition of the property and return 1 copy of the checklist to the landlord within 7 days after receiving possession of the premises.
>
> (4) The checklist shall contain the following notice in 12 point boldface type at the top of the first page: 'You should complete this checklist, noting the condition of the rental property, and return it to the landlord within 7 days after obtaining possession of the rental unit. You

> are also entitled to request and receive a copy of the last termination inventory checklist which shows what claims were chargeable to the last prior tenants.'
>
> (5) At the termination of the occupancy, the landlord shall complete a termination inventory checklist listing all the damages he claims were caused by the tenant.

When more than one person occupies the premises with the landlord's consent and the landlord requires all of them to sign the rental agreement and the checklist, all signators are responsible for the conditions of items on the checklist until the last of them has terminated the occupancy. See Opinion of the Attorney General, No. 5318, June 21, 1978.

D. Landlord's Action for Damages

If a landlord brings an action to retain a tenant's security deposit for damages, he or she must do so within 45 days of the tenant's termination of occupancy. MCL 554.613(1). A landlord who fails to comply with the requirement of "this section" waives "all claimed damages and [is] liable to the tenant for double the amount of the security deposit retained." MCL 554.613(2); *Tree City Props, LLC v Perkey*, 327 Mich App 244, 250 (2019) ("[t]he term 'this section' is plainly self-referential and is thus read to mean that compliance with MCL 554.613 is required and that it is the noncompliance with the requirements of *MCL 554.613(1)* that creates the double penalty liability set forth in MCL 554.613(2)"). MCL 554.613(1) states:

> (1) Within 45 days after termination of the occupancy and not thereafter the landlord may commence an action in a court of competent jurisdiction for a money judgment for damages which he has claimed or in lieu thereof return the balance of the security deposit held by him to the tenant or any amount mutually agreed upon in writing by the parties. A landlord shall not be entitled to retain any portion of a security deposit for damages claimed unless he has first obtained a money judgment for the disputed amount or filed with the court satisfactory proof of an inability to obtain service on the tenant or unless:
>
> > (a) The tenant has failed to provide a forwarding address as required by [MCL 554.611].
> >
> > (b) The tenant has failed to respond to the notice of damages as required by [MCL 554.612].

> (c) The parties have agreed in writing to the disposition of the balance of the deposit claimed by the landlord.
>
> (d) The amount claimed is entirely based upon accrued and unpaid rent equal to the actual rent for any full rental period or portion thereof during which the tenant has had actual or constructive possession of the premises.

"[MCL 554.613(1)] deals strictly with claims for damages to be secured out of security deposits, and does not in any way enhance, restrict, or affect preexisting statutory and common[-]law remedies for damages or for unpaid rent." *Oak Park Village*, 128 Mich App at 681. MCL 554.613(2) states:

> (2) This section does not prejudice a landlord's right to retain any security deposit funds as satisfaction or partial satisfaction of a money judgment obtained pursuant to summary proceedings filed pursuant to [MCL 600.5701 to MCL 600.5759[3]] or other proceedings at law. Failure of the landlord to comply fully with this section constitutes waiver of all claimed damages [against the security deposit] and makes him liable to the tenant for double the amount of the security deposit retained.

E. Checklist for Operation of Security Deposits

- Tenant begins occupying rental property.
  - Within 14 days, the landlord provides notice to the tenant of the name and address of the financial institution where the security deposit is held or of the surety, and of the tenant's duty to provide the landlord with a forwarding address after termination of tenancy. MCL 554.603.
  - The amount of the security deposit is limited to 1-1/2 months' rent. MCL 554.602.
  - Within seven days, the tenant completes an inventory checklist and forwards a copy to the landlord. MCL 554.608(3).
- Tenant vacates the rental property.

[3] See Chapter 4 for information about summary proceedings.

- Within four days of vacating the property, the tenant informs the landlord of an address at which the tenant may be reached. MCL 554.611.

- Within 30 days of termination, the landlord returns the full deposit or sends to the tenant an itemized list of damages and any undisputed moneys, with notice to the tenant that he or she must respond. MCL 554.609. If the landlord sends the undisputed moneys by direct deposit, electronic transfer, or an internet or mobile payment account or application instead of by check or money order, the landlord deposits them into the tenant's account "within 10 days after mailing the notice of damages." MCL 554.609(3).

- Within seven days of receiving the itemized list of damages from the landlord, the tenant responds to the landlord's claims. MCL 554.612.

- Within 45 days of the tenant's vacation of the property, the landlord sues for a judgment to retain any deposit moneys in dispute, unless:

  - the tenant failed, without excuse, to provide a forwarding address, or

  - the tenant failed to respond to the list of damages, or

  - the parties have agreed in writing to the disposition of the deposit, or

  - the deposit amount retained equals any

    - outstanding money judgments, or

    - rent due for a period of time the tenant was actually or constructively in possession of the property. MCL 554.613(1).

F. Termination of a Lease Under the LTRA

There are two statutes under the LTRA that specifically address special circumstances for lease terminations.

- Eligibility for subsidized senior citizen housing or inability to live independently.

  MCL 554.601a states:

  > (1) A rental agreement shall provide that a tenant who has occupied a rental unit for more than 13

> months may terminate a lease by a 60-day written notice to the landlord if 1 of the following occurs:
>
> > (a) The tenant becomes eligible during the lease term to take possession of a subsidized rental unit in senior citizen housing and provides the landlord with written proof of that eligibility.
> >
> > (b) The tenant becomes incapable during the lease term of living independently, as certified by a physician in a notarized statement.[4]

- Reasonable apprehension of present danger.

  Subject to the requirements of MCL 554.601b,[5] a tenant who

  > has a reasonable apprehension of present danger to the tenant or his or her child from domestic violence, sexual assault, or stalking while that person is a tenant shall be released from his or her rental payment obligation in accordance with the requirements of this section after submittal of written notice of his or her intent to seek a release and written documentation that the tenant has a reasonable apprehension of present danger to the tenant or his or her child from domestic violence, sexual assault, or stalking. [MCL 554.601b(1).]

  - If a rental agreement does not contain a provision stating the circumstances in MCL 554.601b under which a tenant may "seek a release of rental obligation[,]" the information must be posted in writing or delivered to a tenant when a lease is signed. MCL 554.601b(1).

  - The tenant's notice to seek release from his or her rental obligation for a reason specified under MCL 554.601b must be in writing and delivered by certified mail. MCL 554.601b(1).

  - The documentation required by MCL 554.601b must include a written statement of the tenant's reasonable apprehension of present danger. MCL 554.601b(2). The statement may be satisfied

[4] "This section applies only to leases entered into, renewed, or renegotiated after [June 15, 1995]." MCL 554.601a(2).

[5] "This section applies only to leases entered into, renewed, or renegotiated after [October 5, 2010]." MCL 554.601b(6).

by supplying the landlord with one or more of the following:

- A valid personal protection order. MCL 554.601b(3)(a).
- A valid probation or parole order, or a conditional release order. MCL 554.601b(3)(b).
- A written police report that resulted in filed charges not more than 14 days before the tenant's submission of written notice. MCL 554.601b(3)(c).
- A written police report that resulted in filed charges more than 14 days before the tenant's submission of written notice, provided that the tenant "demonstrate[s] a verifiable threat of present danger from domestic violence, sexual assault, or stalking." MCL 554.601b(3)(d).[6]

- The tenant's forwarding address may not be revealed unless "reasonably necessary to accomplish the landlord's regular and ordinary business purpose." MCL 554.601b(4). "The landlord shall not intentionally reveal forwarding address information or documentation submitted by the tenant under [MCL 554.601b] to the person that the tenant has identified as the source of the reasonable apprehension of domestic violence, sexual assault, or stalking." MCL 554.601b(4).

If multiple parties are liable under the lease for rental obligations, those parties remain liable for the obligations. MCL 554.601b(5).

G. Civil Action for Injunctive Relief and Damages for Violation of § 554.601c (Source of Income Discrimination)

The LTRA prohibits a person that is a landlord and owns five or more rental units in Michigan (including all related entities to that

[6]The *verifiable threat of present danger* required under MCL 554.601b(3)(d) may be satisfied by submitting a verified written report by a qualified third party as prescribed by MCL 554.601b(3)(e). MCL 554.601b(3)(d). A *qualified third party* is a sexual assault/domestic violence counselor, a licensed/registered health professional, a mental health professional, or a member of the clergy. See MCL 554.601b(8)(c).

person) from discriminating against an individual "based on the source of income of an otherwise eligible prospective or current tenant[.]" MCL 554.601c(1)-(2).[7] "A person alleging a violation of [MCL 554.601c] may bring a civil action for appropriate injunctive relief or damages, or both." MCL 554.601d(1).

Under MCL 554.601d(1), "'damages' means actual damages for injury or loss caused by each violation of [MCL 554.601c], or up to [three] times the monthly rent for the rental unit or units at issue, whichever is less, together with court costs and reasonable attorney fees." MCL 554.601d(1).

"An action commenced under [MCL 554.601d(1)] may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or where that person's principal place of business is located." MCL 554.601d(2).

2.2 Truth in Renting Act

The Truth in Renting Act (TRA), MCL 554.631 *et seq.*, is applicable only to residential premises subject to written rental agreements. See MCL 554.632(a). The TRA serves two purposes:

- it *prohibits* certain provisions from being included in written residential leases, and
- it *requires* certain provisions to be included in written residential leases. MCL 554.634(1).

A. Specifically Prohibited Clauses

The following clauses are specifically prohibited by MCL 554.633 of the TRA from inclusion in written leases. If such a provision is included in a lease, the provision is void. MCL 554.633(3).

1. Waiver of Remedy Available for Violation of Covenants of Fitness and Habitability

The TRA prohibits any clause that "waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of habitability and fitness required [by] . . . MCL 554.139." MCL 554.633(1)(a).

[7] For more information on the prohibition of discrimination based on the source of income, see Section 1.2(B)(9).

2. Waiver of Security Deposit Rights

Clauses that purport to waive any rights granted to parties under the Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq.*, are prohibited and void. MCL 554.633(1)(b). See Section 2.1 for more information on security deposits.

3. Discrimination and Exclusion of Certain Persons

Lease provisions that exclude or discriminate against individuals in violation of the Elliott-Larsen Civil Rights Act (ELCRA) (MCL 37.2101 *et seq.*) on the basis of the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status of an individual, or anyone residing with that individual, are prohibited and void. MCL 37.2102(1); MCL 37.2502(1); MCL 554.633(1)(c). ELCRA also prohibits a person that is a landlord that owns five or more rental units in Michigan, including all related entities to that person, from discriminating against an individual "based on the source of income of an otherwise eligible prospective or current tenant[.]" MCL 37.2502(3)-(4).

Also prohibited is any clause in violation of the Persons With Disabilities Civil Rights Act (PWDCRA) (MCL 37.1101 *et seq.*). MCL 37.1502(1); MCL 554.633(1)(c). See Section 1.7 and Section 5.5 for more information on housing discrimination.

4. Confessions of Judgment

Confession of judgment clauses are prohibited. MCL 554.633(1)(d).

5. Waiver of Landlord Liability Imposed by Law

Provisions which exculpate landlords from liability imposed by law are prohibited.[8] MCL 554.633(1)(e).

6. Waiver of Procedural Rights

Any clauses that waive a tenant's right to trial by jury,[9] to notice,[10] or to any other procedural rights provided by the Summary Proceedings Act, or by the anti-lockout law, are

[8]However, this provision does not apply to lease clauses that release landlords from liability arising from loss or damage due to fire or other casualty for which the tenant carries insurance where the policy permits waiver of liability. MCL 554.633(1)(e).

[9]MCL 554.633(1)(f). See also MCL 445.903(1)(t).

prohibited. MCL 554.633(1)(f). See Chapter 4 for information on summary proceedings.

7. Court Costs and Attorney Fees

Some leases include clauses imposing collection costs upon a tenant that attempt to include attorney fees and/or court litigation costs incurred in collecting rent or in bringing an eviction action. Under the TRA, such provisions are prohibited except for the fees and costs permitted by statute. MCL 554.633(1)(g).

8. Lien on Personal Property of the Tenant

Clauses which grant the landlord a security interest in any personal property of the tenant to assure payment of rent or other charges are prohibited unless specifically allowed by law.[11] MCL 554.633(1)(h).

9. Acceleration of Rent

Acceleration clauses are prohibited, "unless the [clause] also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any." MCL 554.633(1)(i).

10. Waiver of Rights in Summary Proceedings and Lockout Cases

Any clause purporting to waive a tenant's rights with regard to summary proceedings[12] for eviction (MCL 600.5701 *et seq.*) or with regard to illegal detainer, lockout, or interference with possession[13] (MCL 600.2918) is prohibited and void. MCL 554.633(1)(j). See also MCL 600.2918(7), which states that "[t]he provisions of this section may not be waived."

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[10] MCL 554.633(j).

[11] See, for example, the Innkeepers Lien Act, MCL 427.201, which allows a lien on the personal property of certain persons, including tenants, in inns, boardinghouses, lodging houses, bed and breakfasts, and furnished apartments.

[12] See Chapter 4 for information on summary proceedings.

[13] See Section 1.3 for more information on interference with possession.

11. Release From Duty to Mitigate

A provision that releases a party from the duty to mitigate damages in the event of a breach is prohibited and void. MCL 554.633(1)(k).

12. Unilateral Lease Changes

A provision that permits the landlord to modify the lease after its commencement without the written consent of the tenant is prohibited except for certain specific reasons. MCL 554.633(1)(*l*). "[A]n agreement may provide for the following types of [unilateral] adjustments to be made on written notice of not less than 30 days[:]"

- Changes that are required by federal, state or local law or rule or regulation. MCL 554.633(1)(*l*)(*i*).
- Changes in rules that are required to protect the health, safety, or peaceful enjoyment of tenants and guests. MCL 554.633(1)(*l*)(*ii*).
- Changes in rental payments that are needed to cover additional operating costs caused by increases in property taxes, certain utility rates, or premiums paid for liability, fire, or workers compensation insurance. MCL 554.633(1)(*l*)(*iii*).

Cooperatives are also covered by MCL 554.633(1)(*l*).

13. Violations of the Michigan Consumer Protection Act (CPA)

Any lease provision that violates the CPA (MCL 445.901 *et seq.*) is prohibited and void.[14] MCL 554.633(1)(m).

14. Power of Attorney

Any lease provision "requir[ing] the tenant to give the lessor a power of attorney" is prohibited and void. MCL 554.633(1)(n).

[14] See Section 1.2(D) for more information on the CPA.

15. Additional Charge or Fee on All Methods of Rent Payment

Any lease provision that "[i]mposes an additional charge or fee on all methods for the payment of rent allowed under the lease agreement" is prohibited and void. MCL 554.633(1)(o). "For purposes of this subdivision, if a rental agreement allows for more than 1 method for the payment of rent, the rental agreement must have a provision that allows at least 1 method for the payment of rent to be used without the tenant incurring an additional charge or fee." MCL 554.633(1)(o).

16. Provisions Declared Unenforceable

"A rental agreement must not include a clause or provision that, not less than 90 days before the execution of the rental agreement, has been prohibited by statute or declared unenforceable by a published decision of the supreme court of this state or the United States Supreme Court relating to the law of this state." MCL 554.633(2).

B. Specifically Required Clauses

MCL 554.634 requires the following items to be included in a written lease:

> (1) A rental agreement shall state the name and address at which notice required under this act shall be given to the lessor.
>
> (2) A rental agreement shall state in a prominent place in type not smaller than the size of 12-point type, or in legible print with letters not smaller than 1/8 inch, a notice in substantially the following form:
>
> > NOTICE: Michigan law establishes rights and obligations for parties to rental agreements. This agreement is required to comply with the Truth in Renting Act. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person.

In addition to these clauses, the Landlord-Tenant Relationship Act (LTRA) requires notice of a tenant's right to seek release of his or her rental obligation under MCL 554.601b (reasonable apprehension of present danger from domestic violence, sexual assault, or stalking).[15] The written notice must be either in the form of a clause in the rental agreement, posted so that it is "visible to a reasonable

person in the landlord's property management office[,]" or delivered "to the tenant when the lease agreement is signed." MCL 554.601b(1).

C. Remedies and Actions for TRA Violations

1. Required Notice by Tenant

a. Lease Contains Prohibited Provision

If a tenant believes that a clause in his or her lease violates MCL 554.633, he or she must send written notice to the landlord specifying the prohibited clause and its defect. See MCL 554.636(1). However, "[a] tenant may exercise the remedies of [MCL 554.636] without the prior notice to the landlord required by . . . [MCL 554.636(1)] under any of the following circumstances:

> (a) If a rental agreement contains a provision which has previously been determined by a court of record to be in violation of [MCL 554.633] in an action to which the lessor was a party.
>
> (b) If a rental agreement contains a provision which the lessor actually knew was in violation of [MCL 554.633] at the time the rental agreement was entered into." MCL 554.636(3).

For purposes of MCL 554.636(3)(b)-(c), *actual knowledge* must be

> established by written documentation, evidencing the actual knowledge, written or issued by the lessor or an agent of the lessor who is authorized to execute rental agreements or by an admission, evidencing the actual knowledge, made by the lessor or an agent of the lessor who is authorized to execute rental agreements or by showing the lessor has previously given notice under [MCL 554.635] relating to the same provision which is the subject of the current action. [MCL 554.636(3)(c).]

[15] See Section 2.1(F) for more information.

b. Lease Does Not Contain Required Provision

If a tenant believes that his or her lease violates MCL 554.634, he or she must send written notice to the landlord specifying the missing clause. See MCL 554.636(2). However, "[a] tenant may exercise the remedies of [MCL 554.636] without the prior notice to the landlord required by . . . [MCL 554.636(2)] under . . . the following circumstances:

> (c) If a rental agreement does not include a provision as required by [MCL 554.634] and the lessor actually knew that the provision was not included as required at the time the rental agreement was entered into." MCL 554.636(3).

2. Required Notice by Landlord—Cure

a. Lease Contains Prohibited Provision

Upon receiving notice from a tenant that the lease contains a prohibited provision, the landlord has 20 days to cure the violation by:

- giving written notice to all current tenants that the clause is void and unenforceable, or
- altering the provision to bring it into compliance with the law. MCL 554.635(1).

Notice may be provided "to the tenant at the address of the leased premises" by personal service, first-class mail, or certified mail. MCL 554.635(3).

b. Lease Does Not Contain Required Provision

Upon receiving notice from a tenant that the lease does not contain a required provision, the landlord has 20 days to cure the violation "by giving written notice to all tenants who are currently parties, with the lessor, to a rental agreement which does not include a required statement. The notice shall set forth the statement as provided in [MCL 554.634]." MCL 554.635(2).

Notice may be provided "to the tenant at the address of the leased premises" by personal service, first-class mail, or certified mail. MCL 554.635(3).

3. Action and Remedies Available if Violation Not Cured

a. Lease Contains Prohibited Provision

> If a rental agreement contains a provision which violates [MCL 554.633], and if the landlord fails to cure the violation by exercising the notice provisions of [MCL 554.635] within 20 days after the tenant gives written notice to the landlord of the provision believed to be in violation and the reason therefor, a tenant may bring an action for any of the following relief:
>
> > (a) To void the rental agreement and terminate the tenancy.
> >
> > (b) To enjoin the lessor from including the provision in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in [MCL 554.635] to cure the violation in all rental agreements in which the provision occurs and to which the lessor is currently a party.
> >
> > (c) To recover damages in the amount of $250.00 per action, or actual damages, whichever is greater. MCL 554.636(1).[16]

In addition,

> If a rental agreement . . . contains a provision which is explicitly and unambiguously prohibited by [MCL 554.633], and if the landlord fails to cure the violation by exercising the notice provisions of [MCL 554.635] within 20 days after the tenant, or, where there is more than one plaintiff, each

[16] According to MCL 554.636(5):

> All actions brought under [MCL 554.636(1)] with respect to a particular provision of a rental agreement shall be joined, and only 1 judgment for damages of $250.00 shall be awarded with respect to a particular provision even if there are multiple actions or multiple plaintiffs if, before judgment in the initial action and before the passage of 30 days after service of process in any second action, the lessor gives written notice to all tenants who are currently subject to that provision, stating that the enforceability of the provision is under dispute and may be determined by a court of law.

> tenant, gives written notice to the landlord of the provision . . . believed to be in violation and the reason therefor, a tenant may bring an action for any of the following relief:
>
> > (a) To avoid the rental agreement and terminate the tenancy.
> >
> > (b) To enjoin the lessor from including the provision which violates [MCL 554.633] in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in [MCL 554.635] to cure the violation in all rental agreements in which the provision occurs and to which the lessor is currently a party.
> >
> > * * *
> >
> > (d) To recover damages in the amount of $500.00, or actual damages, whichever is greater. [MCL 554.636(2).]

However,

> If a rental agreement contains the provisions as required by [MCL 554.634] but contains a provision which violates [the TRA], solely because of a judicial construction by a court of record of a provision of a statute cited in [MCL 554.633] in an action to which the lessor was a party, the lessor shall not be subject to the penalties of [the TRA] unless the lessor fails to cure the violation by exercising the notice provisions of [MCL 554.635] within 30 days following the final determination by the court. [MCL 554.636(6).]

"A party who prevails in an action under [MCL 554.636] is entitled to recover court costs plus statutory attorney fees." MCL 554.636(4).

b. Lease Does Not Contain Required Provision

If the landlord fails to cure a violation of MCL 554.634, the tenant may seek the relief set out in MCL 554.636(2):

> If a rental agreement fails to contain a provision as required by [MCL 554.634] . . . , and if the landlord fails to cure the violation by exercising the notice provisions of [MCL 554.635] within 20 days after the tenant, or, where there is more than one plaintiff, each tenant, gives written notice to the landlord of the . . . absence of a provision believed to be in violation and the reason therefor, a tenant may bring an action for any of the following relief:
>
> > (a) To avoid the rental agreement and terminate the tenancy.
> >
> > * * *
> >
> > (c) To enjoin the lessor from failing to comply with [MCL 554.634] in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in [MCL 554.635] to cure the violation.
> >
> > (d) To recover damages in the amount of $500.00, or actual damages, whichever is greater.

"A party who prevails in an action under [MCL 554.636] is entitled to recover court costs plus statutory attorney fees." MCL 554.636(4).

4. Sale of Forms

Where a commercially printed rental agreement form contains a prohibited clause, omits a required clause, or includes a clause that has been declared unenforceable by a decision of the Michigan or United States Supreme Court not less than 90 days before the sale of the form, the seller of the lease form "shall be liable" to the landlord for any damages the landlord must pay to a tenant who brings an action against the landlord under the TRA. MCL 554.638.

2.3 Habitability Covenants

The habitability covenants apply to all agreements to lease residential property. MCL 554.139 states:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:
>
> > (a) That the premises and all common areas are fit for the use intended by the parties.
> >
> > (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenant[']s wilful or irresponsible conduct or lack of conduct.
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
>
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

Liberal construction of MCL 554.139 "requires a court to give the statutory text the largest, the fullest, and most extensive meaning of which it is susceptible." *Bowerman v Red Oak Mgt Co, Inc*, ___ Mich ___, ___ (2026) (quotation marks and citation omitted). "[N]o notice is required for liability under MCL 554.139." *McNeal v Lincolnshire 2007 Ltd Dividend Housing Ass'n, LLC*, ___ Mich App ___, ___ (2025). "The plain language of MCL 554.139 does not include any indication that notice is required, and there is no ambiguity that requires judicial construction." *McNeal*, ___ Mich App at ___. "Indeed, grafting a constructive or actual notice requirement into MCL 554.139 is both inappropriate and unnecessary because, according to the statute's clear and unambiguous language, [the lessor] owe[s] [a lessee] a statutory duty at all times." *McNeal*, ___ Mich App at ___ (concluding that "the fact that defendants did not have notice of the defect [was] immaterial to plaintiff's claim under MCL 554.139 . . .").

"The statutory protection of MCL 554.139(1) arises from the existence of a residential lease and consequently becomes a statutorily mandated term of such lease." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 636 (2021) (quotation marks and citation omitted). The statutory protection is in addition to any common law protection. *Id*.

"MCL 554.139 provides a specific protection to lessees and licensees of residential property in *addition* to any protection provided by the

common law." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425 (2008). "The statutory protection under MCL 554.139(1) arises from the existence of a residential lease and consequently becomes a statutorily mandated term of such lease. Therefore, a breach of the duty to maintain the premises under MCL 554.139(1)(a) or [MCL 554.139(1)(b)] would be construed as a breach of the terms of the lease between the parties and any remedy under the statute would consist exclusively of a contract remedy." *Allison*, 481 Mich at 425-426.

Tenants defending against eviction actions for nonpayment of rent may seek to enforce the habitability covenants when the landlord's alleged failure to comply with the covenants constitutes a defense to payment of rent. See MCL 600.5741, which states in part: "In determining the amount due under a tenancy the jury or judge shall deduct any portion of the rent which the jury or judge finds to be excused by the plaintiff's breach . . . of 1 or more statutory covenants imposed by . . . [MCL] 554.139[.]" Additionally, the court rules governing *Summary Proceedings to Recover Possession of Premises* authorize the court to issue interim and final injunctive relief "to prevent the person in possession from damaging the property[,] or . . . to prevent the person seeking possession from rendering the premises untenantable or from suffering the premises to remain untenantable." MCR 4.201(I)(1)(a)-(b).

MCL 554.139(1) does not create "a duty on the part of owners of leased residential property to invitees or licensees generally." *Mullen v Zerfas*, 480 Mich 989, 989 (2007) (the landlord did not owe a duty under MCL 554.139(1) to a tenant's social guest). "The covenants created by [MCL 554.139] establish duties of a lessor or licensor of residential property to the lessee or licensee of the residential property, most typically of a landlord to a tenant. By the terms of [MCL 554.139], the duties exist between the contracting parties." *Mullen*, 480 Mich at 990.

The statutory language distinguishes between property described as *premises* and property described as *common areas*. According to the *Allison* Court:

> [T]he Legislature specifically set the term 'common areas' apart from the term 'premises' by applying the first covenant [fit for the use intended] to both terms and the second covenant [keep in reasonable repair] only to 'premises.'
>
> * * *
>
> The exclusion of common areas from the covenant to repair imposed by the statute does not necessarily mean that the lessor is free of any duty to repair common areas, because these areas must still be kept 'fit for the use intended by the parties.' The Legislature elected to impose two different

> duties on the lessor, one for 'premises and all common areas' and one for only 'premises,' and differentiated those duties through its choice of language, one covenant requiring 'fitness' and the other requiring 'reasonable repair.' Because both covenants imposed by the statute apply to premises, and only the covenant for fitness applies to common areas, we can reasonably infer that the Legislature intended to place a less onerous burden on the lessor with regard to common areas. Keeping common areas fit for their intended use may well require a lessor to perform maintenance and repairs to those areas, but may conceivably require repairs less extensive than those required by the second covenant. [*Allison*, 481 Mich at 432-433 (one to two inches of snow covering a parking lot did not render the lot unfit for its intended purpose, nor did it constitute a defect requiring repair).]

"Central to the *Allison* Court's analysis was fitness in the context of using a parking lot to park and to enter, exit, and access parked vehicles." *Bowerman*, ___ Mich at ___. "There was no discussion of the area's fitness for other uses, such as reaching a dumpster." *Id*. at ___. "MCL 554.139(1)(a) requires courts to analyze the fitness of a common area not in the abstract but rather in light of the uses intended by the parties to a residential lease." *Id*. at ___. "There is . . . a nexus between a common area's fitness and the particular tenants at issue." *Id*. at ___.

"MCL 554.139(1)(a) does not require lessors to maintain a common area in ideal condition or even the most accessible condition possible. Rather, the statute requires the lessor to maintain a common area in a condition that renders it fit for its intended use." *Jeffrey-Moise*, 336 Mich App at 637 (citation omitted). Accordingly, in *Holder v Anchor Bay Investments, Inc*, ___ Mich App ___, ___ (2024), the Court of Appeals concluded that exterior stairs "were fit for their intended use under MCL 554.139(1)" because the tenant was not impeded from accessing her apartment by way of the exteriors stairs. The *Holder* Court observed that the tenant admittedly used the stairway twice a day and was familiar with the danger posed by algae on the wooden steps such that she "took extra time when she used the steps." *Holder*, ___ Mich App at ___ (quotation marks omitted). The Court further held that the defendant had no duty to repair because the exterior stairway was a common area and a "lessor's duty to repair under MCL 554.139(1)(b) does not apply to common areas." *Holder*, ___ Mich App at ___ (quotation marks and citation omitted).

"The extent to which a hazard poses an inconvenience of access may be relevant, but it is not dispositive." *Bowerman*, ___ Mich at ___. Pursuant to *Allison*, "the appropriate inquiry under MCL 554.139(1)(a) remains whether the common area in question is fit (i.e., adapted, suited, or

appropriate) for the use intended by the parties." *Bowerman*, ___ Mich at ___, citing *Allison*, 481 Mich at 430; MCL 554.139(1)(a). "If a common area is fit for such use, a plaintiff may not prevail simply by identifying some inconvenience of access they encountered." *Bowerman*, ___ Mich at ___. "Likewise, if a common area is unfit for such use, a defendant may not prevail simply by labeling a hazardous condition as a mere inconvenience." *Id*. at ___.

In *Bowerman*, plaintiff fractured her ankle after stepping into a trench beside the trash-disposal area of an apartment building that "held itself out as specifically housing elderly and disabled tenants." *Id*. at ___ (noting that defendant "retained control over the trash-disposal area and that each of the residents of the building had shared access to the area"). Defendant was accordingly required "to ensure that elderly and disabled tenants had reasonable access to a means of disposing of their trash." *Id*. at ___. However, the trench remained "uncovered and unmarked for several weeks." *Id*. at ___ (observing that defendant's personnel "did not install warnings or visual aids before [plaintiff] was injured"). Plaintiff's proposed property-management expert "opined that the parking lot where the trash-disposal area was located was underlit." *Id*. at ___. That evidence, "paired with photographs of the area, supported [plaintiff's] testimony characterizing the trench as difficult to see in the predawn hours." *Id*. at ___. "On these facts, reasonable persons could conclude that the trench posed a hazard to the elderly and disabled tenants sufficient to render the trash-disposal area unfit for the use intended by the parties." *Id*. at ___ (holding that the Court of Appeals "erred by concluding, as a matter of law, that [defendant] did not breach its covenant under MCL 554.139(1)(a)").

2.4 Housing Law of Michigan (HLM)

The Housing Law of Michigan (HLM), MCL 125.401 *et seq*., contains laws applicable to residential buildings. The HLM "applies to each city, village, and township that, according to the last regular or special federal census, has a population of 10,000 or more." MCL 125.401(2). The HLM "does not apply to private dwellings and 2-family dwellings in any city, village, or township having a population of less than 100,000 unless the legislative body of the local governmental unit adopts the provisions by resolution passed by a majority vote of its members." *Id*. The HLM "applies to all dwellings within the classes defined in [MCL 125.402], except that a reference to 1 or more specific classes of dwellings applies only to those classes to which specific reference is made." MCL 125.401(3). However, nothing in the HLM requires a city, village, or township to adopt the HLM. MCL 125.543.

The HLM does not prevent any city, organized village, or the board of health of any such city or village, from enacting ordinances or

regulations that impose requirements higher than the HLM's minimum requirements. MCL 125.408. The HLM does not prevent cities, organized villages, or the boards of health of such cities and villages, from enacting ordinances that prescribe remedies and penalties similar to those in the HLM. *Id*. The HLM does not "preempt, preclude, or interfere with the authority of a municipality to protect the health, safety, and general welfare of the public through ordinance, charter, or other means." MCL 125.534(8). However, "[n]o ordinance, regulation, ruling or decision of any municipal body, officer of authority of the board of health of any such city or village shall repeal, amend, modify or dispense with any of the said minimum requirements laid down in [the HLM.]" MCL 125.408.

In general, the HLM contains "the minimum requirements adopted for the protection of health, welfare and safety of the community." MCL 125.408.

For example, in part, Article IV of the HLM (Maintenance),[17] addresses the following requirements:

- **Exits and lighting**—MCL 125.465

  The owner must keep all public halls in every multiple dwelling "adequately lighted at all times[.]"

- **Repair**—MCL 125.471

  The owner must keep all parts of every dwelling in good repair. This includes plumbing, heating, ventilation, and electrical wiring.

- **Cleanliness**—MCL 125.474

  Except for those parts of the premises occupied and controlled by individual tenants and for which the tenants are responsible, the owner must keep all parts of the premises free from an accumulation of dirt or garbage. This includes the yards, courts, passages, areas, or alleys connected with or belonging to the premises. In addition, "[t]he owner of every dwelling shall be responsible for keeping the entire building free from vermin."

"The owner of premises regulated by [the HLM] shall comply with all applicable provisions of the [HLM]." MCL 125.533(1). "The occupant of premises regulated by [the HLM] shall comply with provisions of the [HLM] specifically applicable to him." MCL 125.533(2).

[17] MCL 125.465–MCL 125.488.

2.5 Enforcement of the Housing Law of Michigan (HLM)

The governing body of a city or village to which the HLM applies by its terms, or the governing body of a city or village that has adopted the provisions of the HLM, "shall designate a local officer or agency which shall administer the provisions of the [HLM]." MCL 125.523.

The HLM expressly authorizes remedies that include injunctive relief, repair and deduct orders for tenants, costs of repairs charged to an at-fault tenant, demolition, and receiverships. See MCL 125.534(5); MCL 125.535.

A. Affirmative Suits to Enforce the HLM

1. Private Right of Action

MCL 125.534 also authorizes an owner or occupant to bring an enforcement action in his or her own name.[18] MCL 125.534(2) states:

> (2) An owner or occupant of the premises upon which a violation exists may bring an action to enforce [the HLM] in his or her own name. Upon application by the enforcing agency, or upon motion of the party filing the complaint, the local enforcing agency may be substituted for, or joined with, the complainant in the discretion of the court.

In addition to the private right of action authorized in MCL 125.534(2), tenants may also rely on MCL 125.536(1), which provides:

> When the owner of a dwelling regulated by [the HLM] permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling, whether a portion designated for the exclusive use and occupation of residents or a part of the common areas, where such condition exists in violation of [the HLM], any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the

[18] "The enumeration of rights of action under [Article VII of the HLM (Enforcement)] shall not limit or derogate rights of action at common law." MCL 125.537.

> premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

"MCL 125.536(1) plainly applies to areas 'in' the dwelling." *Holder v Anchor Bay Investments, Inc*, ___ Mich App ___, ___ (2024). Accordingly, a trial court did not err by "dismissing plaintiff's statutory claim under MCL 125.536" because the exterior "stairway was not 'in' the dwelling." *Holder*, ___ Mich App at ___.

"Remedies under [MCL 125.536] shall be in addition to such other relief as may be obtained by seeking enforcement of the section authorizing suits by a local enforcement agency. The remedies shall be concurrent. When several remedies are available hereunder, the court may order any relief not inconsistent with the objectives of [the HLM], and calculated to achieve compliance with it." MCL 125.536(2).

In all actions for enforcement of the HLM, whether brought by the enforcing agency or by the tenant, a copy of the complaint and summons must be served upon all "[o]wners and lienholders of record or owners and lienholders ascertained by the complainant with the exercise of reasonable diligence[.]" MCL 125.534(4). "The complainant shall also file a notice of the pendency of the action with the appropriate county register of deeds office where the premises are located." *Id*.

The court with jurisdiction of the action "shall make orders and determinations consistent with the objectives of [the HLM]." MCL 125.534(5). According to MCL 125.534(5):

- The court may enjoin the continuation of any unsafe, unhealthy, or unsanitary conditions or any violations of the HLM.
- The court may order the owner to abate the conditions by making the necessary repairs or corrections.
- The court may authorize the enforcing agency to remove or make repairs to the building.
- If the occupant is not the cause of the condition or violation and is the complainant, "the court may authorize the occupant to correct the violation and deduct the cost from the rent upon terms the court determines just."
- If the occupant is the cause of the condition or violation, the court may authorize the owner to repair

> or correct the violation and to assess the cost against the occupant or his or her security deposit.[19]

Removal of a building or structure is authorized under the HLM when "the cost of repair of the building or structure will be greater than the state equalized value of the building or structure[.]"[20] MCL 125.534(6). "If the expense of repair or removal is not provided for, the court may enter an order approving the expense and placing a lien on the real property for the payment of the expense."[21] MCL 125.534(7).

2. Enforcing Agencies

The enforcing agency may bring suit against an owner or occupant who does not comply with an order in a notice of violation. MCL 125.534(1). MCL 125.534 states, in part:

> (1) If the owner or occupant fails to comply with the order contained in the notice of violation, the enforcing agency may bring an action to enforce [the HLM] and to abate or enjoin the violation.
>
> * * *
>
> (3) If the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, or if there are no occupants and the violation creates an imminent danger to the health and safety of the public, the enforcing agency shall file a motion for a preliminary injunction or other temporary relief appropriate to remove the danger during the pendency of the action.

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[19]See Section 2.1 for information on the Landlord-Tenant Relationship Act, which governs the practice and procedure related to the collection, holding, and return of a tenant's security deposit.

[20]Removal is also an available remedy under specific circumstances when the building or structure is "in [an] urban core cit[y] or [a] local unit[] of government that [is] adjacent to or contiguous to an urban core city[.]" MCL 125.534(6). See also MCL 125.538–MCL 125.543 for information regarding dangerous buildings and orders to demolish, properly maintain, or otherwise make them safe. Discussion of urban core cities and removal is beyond the scope of this benchbook.

[21]The court may give the lien priority over other liens on the property except for taxes and assessments and certain mortgages of record where a certificate of compliance existed at, or subsequent to, the time of recording. MCL 125.534(7). The order may also indicate the time and manner for foreclosure of the lien if it is not satisfied. *Id.* Within ten days after the order is entered, a true copy of the order must be filed with the register of deeds in the county where the property is located. *Id.*

3. Receiverships

The HLM may be enforced through the court's appointment of a receiver to manage a building or structure not in compliance with the HLM. MCL 125.535. Whether to appoint a receiver is in the court's discretion. See generally, *Heritage Hill Ass'n v Kinsey*, 146 Mich App 803, 807-808 (1985). The statute governing receiverships, MCL 125.535, states, in part:

> (1) When a suit has been brought to enforce [the HLM] against the owner the court may appoint a receiver of the premises.
>
> (2) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.
>
> (3) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of [the HLM], and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

The receiver acts as the court's agent. According to MCL 125.535(4):

> Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of [the HLM]. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of [the HLM]. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of [the HLM], and exercise other powers the court deems proper to the effective administration of the receivership.

Committee Tip:

The receivership statute has been utilized with great success in Detroit, where community organizations have used the law to remove control of poorly managed multifamily rental properties from landlords and/or managers to prevent further deterioration and arrest abandonment. Generally, once the flow of rental income to the owner is diverted to a receiver, the owner is anxious to convey the property. For this reason it may be prudent to include in receivership orders an express provision requiring court review of any sale or transfer of the property, in order to deter any attempts by property owners to evade the effect of an order by transferring ownership of the building to a straw purchaser. Court review of these transactions will assure that the conveyance is not sought for fraudulent purposes.

If a receivership's expenses are not otherwise provided for, the court has authority to approve the expenses and place a lien against the real property for payment of the expenses.[22] MCL 125.535(5).

B. Certificates of Compliance

The HLM requires that "[u]nits in multiple dwellings or rooming houses . . . not be occupied unless a certificate of compliance has been issued by the enforcing agency." MCL 125.529(1). A certificate of compliance may be issued even when there exists a violation of the HLM, but a certificate must not be issued if an inspection of the premises reveals any conditions hazardous to the health and safety of the dwelling's occupants.[23] MCL 125.529(2).

[22] "The provisions of [MCL 125.534(7)] as to the contents and filing of an order are applicable to the order . . . provided for [in MCL 125.535(5)]." MCL 125.535(5). Under MCL 125.534(7), the court may give the lien priority over other liens on the property except for taxes and assessments and certain mortgages of record where a certificate of compliance existed at, or subsequent to, the time of recording. The order may also indicate the time and manner for foreclosure of the lien if it is not satisfied. *Id.* Within ten days after the order is entered, a true copy of the order must be filed with the register of deeds in the county where the property is located. *Id*.

[23] "A local governmental unit is not required to inspect a multiple dwelling or other dwelling unless the local governmental unit receives a complaint from a lessee of a violation of [the HLM]." MCL 125.526(1). See MCL 125.526 for a comprehensive discussion of periodic inspections, including the frequency with which they are to be conducted, the circumstances under which an owner is required to provide notice to a tenant of any premises to be inspected, and an owner's obligation to provide the enforcing agency with access to the premises. See also MCL 125.529(3), which governs inspections that must be made "prior to first occupancy of multiple dwellings and rooming houses."

"An owner shall apply for a certificate of compliance. Inspection and issuance of certificates shall be in accordance with the requirements of [the HLM] and with procedures established by the enforcing agency." MCL 125.531(1). Temporary certificates of compliance may be issued under certain circumstances. See MCL 125.531(1).

"Before entering a leasehold regulated by [the HLM], the owner of the leasehold shall request and obtain permission to enter the leasehold." MCL 125.526(11). An owner may enter a tenant's dwelling at any time in cases of emergency; *emergency* includes, but is not limited to, "fire, flood, or other threat of serious injury or death[.]" *Id*.

The enforcing agency must keep records of all inspections, and "[t]he enforcing agency shall make available to the general public a checklist of commonly recurring violations for use in examining premises offered for occupancy."[24] MCL 125.528(2)-(3).

If an inspection of the premises reveals a violation, the enforcing agency must notify the owner in writing "if the violation constitutes a serious and imminent hazard to the health or safety of the occupant." MCL 125.532(1); MCL 125.532(2). "The notice must state the date of the inspection, the name of the inspector, the nature of the violation, the specific section of [the HLM] that was violated, whether the violation constitutes a serious and imminent hazard to the health or safety of the occupants, and the time within which the correction must be completed." MCL 125.532(2). Further, the notice "must be provided in a manner reasonably calculated to give actual notice of the violation to the owner and the occupant." *Id*.

"If an inspector determines that a violation constitutes a serious and imminent hazard to the health or safety of the occupants, under circumstances where the premises cannot be vacated, the enforcing agency shall order the violation corrected within the shortest reasonable time." MCL 125.532(3). The owner must notify the enforcing agency of having begun compliance within three days, and all other violations must be corrected within a reasonable time. *Id*. The enforcing agency must reinspect the premises "after a reasonable time to ascertain whether the violation has been corrected." MCL 125.532(4).

"If an inspector determines that a violation constitutes a serious and imminent hazard to the health or safety of the occupants, the enforcing agency shall notify the [Department of Health and

[24] All violations must be recorded in the registry of owners and premises. MCL 125.532(1). See MCL 125.525(1): "The enforcing agency may maintain a registry of owners and premises regulated by [the HLM]."

Human Services] within 48 hours." MCL 125.532(5). "The notice must state the date of the inspection, the name of the inspector, the nature of the violation, the specific section of [the HLM] that was violated, whether the violation constitutes a serious and imminent hazard to the health or safety of the occupants, and the time within which the correction must be completed." *Id*. The Department of Health and Human Services must "check the address of the premises against the list of rent-vendored family independence program recipients." *Id*.

C. Escrow Accounts

If an occupied building does not have a certificate of compliance or has had its certificate of compliance suspended, payments to the landlord are suspended, and the enforcing agency must establish an escrow account for rents collected from tenants.[25] MCL 125.530(3)-(4).

Suspension of rent payments does not occur "until the owner has had a reasonable time . . . after notice of violations to make application for a temporary certificate[.]"[26] *Id*. Additionally, rent payments are not suspended when "the owner establishes that the conditions which constitute a hazard to health or safety were caused by the occupant or occupants." *Id*. The rent is again payable to the landlord according to the terms of the lease when repairs are made and the building qualifies for a certificate or temporary certificate of compliance. *Id*.

"When the certificate of compliance has been suspended, or has not been issued, and the rents thereafter withheld are not paid into the escrow account, actions for rent and for possession of the premises for nonpayment of rent may be maintained, subject to such defenses as the tenant or occupant may have upon the lease or contract." MCL 125.530(5).

D. Inspections and Constitutional Concerns

Procedural due process requires that an individual be provided "some form of hearing . . . before an individual is *finally* deprived of a property interest." *Mathews v Eldridge*, 424 US 319, 333 (1976) (emphasis added). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a

[25]Rents paid into the escrow account are "paid thereafter to the landlord or any other party authorized to make repairs, to defray the cost of correcting the violations." MCL 125.530(4).

[26]See MCL 125.531 for information on the issuance of temporary certificates.

meaningful manner.'" *Id*., quoting *Armstrong v Manzo*, 380 US 545, 552 (1965).

A tenant may not be evicted from his or her residence without prior notice and a hearing, unless exigent circumstances exist to justify the immediate displacement of the tenant. *Flatford v City of Monroe*, 17 F3d 162, 167 (CA 6, 1994),[27] citing *Fuentes v Shevin*, 407 US 67, 82 (1972). In cases where exigent circumstances do exist, a tenant who is displaced from the premises because of those circumstances is still entitled to a prompt postdeprivation hearing to justify his or her continued eviction from the residence. *Flatford*, 17 F3d at 167. In other words, local building codes that permit the removal of a tenant must provide prior notice to the tenant unless circumstances exist that justify eviction without a predeprivation hearing. A tenant removed without a predeprivation hearing must be afforded the opportunity of a postdeprivation hearing to determine whether eviction was proper. *Grayden v Rhodes*, 345 F3d 1225, 1237-1238 (CA 11, 2003). The tenant must be given notice at the time of eviction of his or her right to challenge the eviction at a postdeprivation hearing. *Id*.

In general, a local government is authorized to conduct rental unit inspections (periodic, area-based, complaint-based, etc.) consistent with the Fourth Amendment, so long as an administrative warrant process is available to inspectors when an occupant denies entry to the individual conducting the inspection. *Camara v Muni Court of City & Co of San Francisco*, 387 US 523, 539-540 (1967). See MCL 125.527 for information about the HLM's warrant requirements.

An administrative warrant does not require the same standard of probable cause as does a criminal search warrant. *Camara*, 387 US at 538-539. Probable cause to issue an administrative warrant to inspect exists "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." *Id*. at 538. These standards include "the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling." *Id*. "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard." *Id*. at 539.

[27] Note that "[a]lthough state courts are bound by the decisions of the United States Supreme Court construing federal law, there is no similar obligation with respect to decisions of the lower federal courts." *Abela v GMC*, 469 Mich 603, 606 (2004) (internal citation omitted).

A warrant to inspect a landlord's property or a tenant's residence is not required in cases of emergency. *Camara*, 387 US at 539.

2.6 Michigan Regulation and Taxation of Marihuana Act (Recreational Marijuana)

Effective December 6, 2018, Initiated Law 1 of 2018, MCL 333.27951 *et seq.*, created the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the purpose of which "is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved." MCL 333.27952.

Notwithstanding these purposes, the MRTMA "allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking." MCL 333.27954(4).[28]

2.7 Servicemembers Civil Relief Act (SCRA)

A. Introduction

One of the purposes of the Servicemembers Civil Relief Act (SCRA) is "to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 USC 3902(2). See also *Walters v Nadell*, 481 Mich 377, 386 (2008) ("Congress enacted the SCRA as a shield to protect servicemembers from having to respond to litigation while in active service"). "[The SCRA] is always to be liberally construed to protect [servicemembers.]" *Boone v Lightner*, 319 US 561, 575 (1943) (referring to the Soldiers' and Sailors' Civil Relief Act, the predecessor to the SCRA).

Subchapter III of the SCRA, 50 USC 3951–50 USC 3959, provides protection for servicemembers and their dependents when a servicemember's military service has a material effect on the servicemember's or his or her dependents' ability to meet

[28] For additional information on the MRTMA, see the Michigan Judicial Institute's *Controlled Substances Benchbook*, Chapter 8.

obligations in the areas covered by the SCRA. 50 USC 3951; 50 USC 3955.

B. Evictions and Payment of Rent

1. Eviction

Consistent with Michigan law, the SCRA protects a servicemember and his or her dependents from eviction without a court order. 50 USC 3951(a)(1)(A). This protection from eviction applies:

- during a period of the servicemember's military service,
- when the premises are occupied or are intended to be occupied "primarily as a residence[,]" and
- when the monthly rent for the premises does not exceed $10,542.60 (as adjusted each calendar year for price inflation).[29] 50 USC 3951(a)(1)(A)(ii). See also 50 USC 3951(a)(2)(A).

2. Distress

A landlord is also prohibited from the common-law remedy of "distress" to recover rent or possession of the premises during a servicemember's military service. 50 USC 3951(a)(1)(B). *Distress* is "[t]he seizure of another's property to secure the performance of a duty, such as the payment of overdue rent[, or t]he legal remedy authorizing such a seizure[or] the procedure by which the seizure is carried out." Black's Law Dictionary (9th ed). See *Sears v Cottrell*, 5 Mich 251 (1858).

3. Stay of Proceedings or Adjusting Lease Obligation

If a servicemember's "ability to pay the agreed rent is materially affected by military service[,]" a court may, on its own motion, or must, if requested by or on behalf of the servicemember, issue a stay of the proceedings or "adjust the obligation under the lease to preserve the interests of all parties." 50 USC 3951(b)(1)(A)-(B). The standard period of time for a stay is 90 days, but the court has discretion to order a longer or shorter stay if justice and equity so require. 50 USC 3951(b)(1)(A). If the court issues a stay of the proceedings, "the

[29] Effective January 1, 2026. See 50 USC 3951(a)(3); Notice of Publication of Housing Price Inflation Adjustment, 91 Fed Reg 11527 (March 10, 2026).

court may grant to the landlord . . . such relief as equity may require." 50 USC 3951(b)(2).

4. Rent Allotment from Servicemember's Pay

The Secretary concerned with the servicemember's branch of the armed services[30] must allot from a servicemember's pay an amount of money sufficient to satisfy the terms of any court order related to the premises at issue in the proceedings. 50 USC 3951(d). The allotted amount is subject to the armed services' regulations for the maximum allotment from a servicemember's pay. *Id*.

5. Violations

Violation of 50 USC 3951 is a Class A misdemeanor. 50 USC 3951(c). See also 18 USC 3559(a)(6); 18 USC 3581(b)(6). "Except as provided in subsection (a) [eviction guidelines], a person who knowingly takes part in an eviction or distress . . . , or who knowingly attempts to do so, shall be fined as provided in [18 USC 3571[31]], or imprisoned for not more than one year, or both." 50 USC 3951(c).

A person aggrieved by a violation of the SCRA has a private right of action against the person responsible for the violation. 50 USC 4042(a). A person who prevails in an action under 50 USC 4042 may be awarded "any appropriate equitable or declaratory relief with respect to the violation" and "all other appropriate relief, including monetary damages." 50 USC 4042(a)(1)-(2). The court may also award costs and a reasonable attorney fee to the aggrieved person if he or she prevails in the action. 50 USC 4042(b).

Under certain circumstances, the United States Attorney General may also enforce the SCRA's provisions through civil actions against persons who violate the Act. See 50 USC 4041.

[30] See 10 USC 101(a)(9); 50 USC 3911(7)(A).

[31] Not more than $100,000. 18 USC 3571(b)(5).

C. Lease Terminations[32]

1. When a Lease May Be Terminated

A servicemember-tenant may terminate a lease covered under the SCRA at any time after:

- the servicemember enters into military service, or
- the date the servicemember received military orders for:
  - a permanent change of station, or
  - deployment with a military unit, or as a person in support of a military operation, for at least 90 days. 50 USC 3955(a)(1)(A)-(B); 50 USC 3955(b)(1)(B).

A lease covered under 50 USC 3955 includes "[a] lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if[:]"

- "the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service;" or
- "the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days[.]" 50 USC 3955(b)(1)(A)-(B).

A servicemember's termination of a lease under 50 USC 3955 also terminates any obligations a servicemember's dependents have under the lease. 50 USC 3955(a)(2).

2. Notice of Termination

A servicemember must provide his or her landlord with "written notice of . . . termination, and a copy of the servicemember's military orders . . . ." 50 USC 3955(c)(1)(A).

[32] A *lease*, as described in 50 USC 3955, means either certain leases of premises or certain leases of motor vehicles. 50 USC 3955(b). Any reference to a *lease* in this subsection of the benchbook is a reference to a lease of premises.

The notice must be served in one of four ways:

- hand delivering the notice to the landlord,
- having the notice delivered by a private business carrier,
- mailing the notice to the landlord, return receipt requested, in an envelope that has sufficient postage and is properly addressed to the landlord.
- by electronic means as described in 50 USC 3955(c)(2)(D)(i)-(iii). 50 USC 3955(c)(2)(A)-(D).

3. Effective Date of Termination

For leases under which the rent is paid monthly (and the lease is covered because of the servicemember's entry into military service, orders for a permanent change of station, a deployment, or as a person in support of a military operation), a termination "is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice . . . is delivered." 50 USC 3955(d)(1)(A). For all other such leases, a termination "is effective on the last day of the month following the month in which the notice is delivered." *Id*.

D. Remedies

1. Unpaid Rent

Unpaid rent due on a lease that was terminated due to a servicemember's entry into military service, an ordered change in permanent station, or a deployment for 90 days or more, must be paid on a prorated basis. 50 USC 3955(e)(1). No early termination charge may be imposed. *Id*. However, the servicemember is obligated to pay any of his or her other outstanding obligations under the lease, "including reasonable charges . . . for excess wear[.]" *Id*.

2. Rent Paid in Advance

The landlord must within 30 days of the termination's effective date refund to the servicemember any amount of rent paid for a period of time after that date. 50 USC 3955(f).

3. Relief for the Landlord

If the landlord requests relief before the termination date in the written notice of termination and if justice and equity require it, the court may modify the relief granted to a servicemember under 50 USC 3955. 50 USC 3955(g).

4. Violations

A person who knowingly holds or attempts to hold the property or security deposit "of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by [50 USC 3955]" or who knowingly interferes with removal of property from the premises, for the purpose of subjecting the property or the security deposit to a claim for rent accruing after the date of a lawful termination of a lease, commits a Class A misdemeanor and "shall be fined as provided in [18 USC 3571[33]], or imprisoned for not more than one year, or both." 50 USC 3955(h).

E. Default Judgments

1. Protection

The SCRA provides a servicemember with some protection from default judgments when the servicemember's failure to appear in court is related to his or her military service. 50 USC 3931(a).

Before the court may enter a default judgment against a servicemember-tenant who failed to appear in a civil action or proceeding, the landlord must file an affidavit with the court. 50 USC 3931(b)(1). The affidavit must state whether the servicemember is in military service, and the affidavit must show facts sufficient to support the affidavit's assertion. 50 USC 3931(b)(1)(A). If the landlord is unable to determine whether the servicemember is in military service, the affidavit must state that information. 50 USC 3931(b)(1)(B).

If the court concludes that the servicemember is in military service, the court must appoint an attorney to represent the servicemember's interests before the court may enter a judgment. 50 USC 3931(b)(2). If the attorney cannot locate the servicemember, the attorney's actions on behalf of the

[33] Not more than $100,000. 18 USC 3571(b)(5).

servicemember do not waive any defenses the servicemember may have and do not otherwise bind him or her. *Id.*

If the court is unable to determine whether the servicemember is in military service, the court may require the landlord to post a bond that, if the servicemember is later found to be in military service, is available "to indemnify the [servicemember] against any loss or damage the [servicemember] may suffer by reason of any judgment for the [landlord] against the [servicemember], should the judgment be set aside in whole or in part." 50 USC 3931(b)(3).

If the servicemember is in military service and does not appear in court, the court must stay the proceedings for at least 90 days, on the court's own motion or upon the application of a party, if the court determines that

- "there may be a defense to the action and a defense cannot be presented without the presence of the [servicemember]; or"
- "after due diligence, counsel has been unable to contact the [servicemember] or otherwise determine if a meritorious defense exists." 50 USC 3931(d)(1)-(2).

A servicemember who receives actual notice of the proceedings at which he or she failed to appear because of military service may request a stay of the proceedings under 50 USC 3932. 50 USC 3931(f). However, "[a] stay of proceedings under [50 USC 3931(d)] shall not be controlled by procedures or requirements under [50 USC 3932]." 50 USC 3931(e).

2. Setting Aside Default Judgments

If a default judgment was entered against a servicemember during his or her military service or within 60 days of his or her release from such service, the court, on request of the servicemember or on his or her behalf, must reopen the judgment and allow the servicemember to defend the action if:

- "the servicemember was materially affected by reason of that military service in making a defense to the action; and"
- "the servicemember has a meritorious or legal defense to the action or some part of it." 50 USC 3931(g)(1)(A)-(B).

"An application [to set aside a default judgment] must be filed not later than 90 days after the date of the termination of or release from military service." 50 USC 3931(g)(2).

Chapter 3: Governmentally Subsidized Housing

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3.1 Organization of Chapter[1]

MCR 4.201(B)(3)(b) requires a complaint in summary proceedings to "contain specific reference to the rules or law establishing the basis for ending [a] tenancy [in governmental housing]." This chapter contains a general description of the primary types of subsidized housing and a broad discussion of the requirements for evicting a tenant or terminating a tenant's lease in cases involving the primary types of subsidized housing.[2]

An exhaustive discussion of subsidized housing is beyond the scope of this benchbook. Every effort has been made to cite authorities for the information contained in this chapter. Please consult the applicable law for comprehensive treatment of the specific areas discussed.[3] See also Section 3.9 for a list of subsidized housing resources.

Charts of the basic characteristics of the primary types of subsidized housing may be found in Section 3.9.[4]

Although there exists some overlap in the notice and eviction requirements for all the types of governmentally subsidized housing addressed by this benchbook, these requirements are duplicated as necessary in the discussions of each type of housing so that all information concerning a particular type of housing may be found in the section addressing that type of housing.

3.2 Subsidized Housing in General

The federal and state governments operate programs that provide subsidized housing assistance to eligible low income families, the elderly, people who are homeless, and people with disabilities.[5] Most financial assistance for low income housing comes from the United States Department of Housing and Urban Development (HUD).[6]

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[1]Jim Schaafsma, attorney with the Michigan Poverty Law Program, and Robert Gillett, executive director and attorney with Legal Services of South Central Michigan, provided expert guidance for the development of this chapter. Development of the chapter was also guided by an article written by Fred Fuchs: *Defending Families and Individuals threatened with Eviction from Federally Subsidized Housing, HOME-Funded Properties, § 515 Rural Rental Housing, § 8 Moderate Rehabilitation, Shelter Plus Care and Supportive Housing, HOPWA, Tax Credit Housing, Section 8 Housing Choice Voucher Program, Public Housing, and Project-Based Voucher Program* (updated September 2011).

[2]Subsidized housing may be located in Michigan through the Michigan State Housing Development Authority's (MSHDA) subsidized housing inventory. See http://www.mshda.info/housing_locator/.

[3]For assistance in understanding and managing landlord-tenant matters see http://michiganlegalhelp.org/self-help-tools/housing.

[4]For an overview of subsidized housing and subsidized housing policies, see The Urban Institute, *Federal Programs for Addressing Low-Income Housing Needs, A Policy Primer* (2008), at https://www.urban.org/research/publication/federal-programs-addressing-low-income-housing-needs.

In most cases, a tenant's rent is based on a percentage of the tenant's income and results in a "tenant portion" and a "government portion" of the total rent. See 42 USC 1437a(a). The three primary exceptions to this general rule are: (1) the Low Income Housing Tax Credit Program under which below market rents are based on a percentage of the area median income; (2) multifamily properties on which HUD insures the mortgage and rent is based on the project's operating budget; and (3) Rural Housing without Housing Assistance (rural loan program), where "basic" and "note" rents are based on a property's interest rate and the property's operating, management, and maintenance expenses.

A. Federal and State Law Requirements Are Cumulative

Landlord-tenant cases are subject to the cumulative effect of federal and state law. In all cases, landlords must comply with the requirements of federal and state law as those laws pertain to the landlord-tenant issues involved in each case. See *Ypsilanti Housing Comm'n v O'Day*, 240 Mich App 621, 631 (2000). See also 24 CFR 247.6(a). See the following archived editions for the page references given here: *Public Housing Occupancy Guidebook*[7] (June 2003), p 203; *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (May 2003, revised with CHG-2, effective June 2007, and CHG-3, effective June 2009) (hereafter *Handbook 4350.3*), p 8-10; *Housing Choice Voucher Guidebook 7420.10G*[8] (April 2001), p 15-3; and *Multifamily Housing (MFH) Asset Management Handbook HB-2-3560* (United States Department of Agriculture (USDA), Feb 2005, revised Dec 2008), Attachment 6-E, p 5. See Section 3.9 (Subsidized Housing Resources) for current guidebooks, handbooks, and other resources.

"A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by [applicable federal law]." 24 CFR 247.6(c). See also *Ypsilanti Housing Comm'n*, 240 Mich App at 631. For similar guidelines with regard to various subsidized housing programs, see *Handbook 4350.3*, pp 6-4, 8-16.

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[5]A discussion of the requirements to qualify for housing assistance is beyond the scope of this benchbook. However, note that sex offenders subject to lifetime registration under any state law are not eligible for federal housing assistance. See 42 USC 13663; 24 CFR 5.856.

[6]See https://www.hud.gov/states/michigan and https://www.hud.gov/states/michigan#LocalOffice for HUD information specific to Michigan.

[7]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[8]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

B. General Categories of Subsidized Housing

In general, housing assistance is categorized as either tenant-based or project-based:

1. Tenant-Based Subsidized Housing

In tenant-based subsidized housing, the subsidy is assigned to a person or family, and the eligible person or family may select suitable housing for which the landlord accepts rental assistance. 42 USC 1437f(f)(7); 24 CFR 982.1(b)(1)-(2). See also 42 USC 1437a(b)(3). Section 8 Housing Choice Vouchers are an example of tenant-based housing assistance. See 42 USC 1437f(o). Tenant-based assistance is portable; that is, it travels with the individual to whom the assistance is awarded. See 42 USC 1437f(f)(7); 24 CFR 982.1(b)(2).

2. Project-Based Subsidized Housing

In project-based subsidized housing, the subsidy is attached to the housing structure itself. 42 USC 1437f(f)(6); 24 CFR 982.1(b)(1). Project-based assistance includes multifamily property or select units within a multifamily property (usually HUD project-based Section 8 assistance), HUD Public Housing, privately owned multifamily developments with HUD contracts, and the Section 515 Rural Housing Program. See e.g., *Handbook 4350.3*, pp 1-6, 1-7.

3.3 Public Housing

"Public housing was established to provide decent and safe rental housing for eligible low[]income families, the elderly, and persons with disabilities." *HUD's Public Housing Program*. HUD (United States Department of Housing and Urban Development) provides federal funding to local public housing agencies (PHAs) that own and manage the public housing units. *Id*. A PHA is "any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low[]income housing under the 1937 Act."[9] 24 CFR 5.100. See also 42 USC 1437a(b)(6)(A).

While the public housing units are operated by local PHAs (called *housing commissions* in Michigan, MCL 125.654), the housing units are subject to federal law and HUD oversight. *HUD's Public Housing Program*.

[9]United States Housing Act of 1937. 42 USC 1437 *et seq*.

Only low income persons or families are eligible for public housing. *HUD's Public Housing Program*. Eligibility is determined by annual gross income; age, disability, or status as a family; and United States citizenship or immigration status. *Id*. If some household members have an eligible immigration status and other household members do not have an eligible immigration status (a "mixed" household), the household's assistance would be prorated based on the ratio between the number of household members that have an eligible immigration status and the total number of household members. See 24 CFR 5.504(b); 24 CFR 5.520. See generally, 24 CFR 5.500–24 CFR 5.528. For example, if only three of five household members have an eligible immigration status, the household would receive 60 percent of the assistance available to a household where 100 percent of the members have an eligible immigration status.

"In general, you may stay in public housing as long as you comply with the lease." *HUD's Public Housing Program*.

For comprehensive information on Public Housing, see *HUD Public Housing Occupancy Guidebook* (June 2003) (hereafter referred to as *Public Housing Guidebook*).[10]

A. Grounds for Eviction/Termination of Lease

A PHA may evict a tenant from Public Housing for the following reasons:

- Serious or repeated violations of material lease provisions. 42 USC 1437d(*l*)(5); 24 CFR 966.4(*l*)(2)(i). See 24 CFR 966.4(*l*)(2)(*i*)(A)-(B) for examples of serious or repeated material violations.
- Having an income over the program limit. 24 CFR 966.4(*l*)(2)(*ii*).
- Other good cause, 42 USC 1437d(*l*)(5); 24 CFR 966.4(*l*)(2)(*iv*), including, but not limited to, the following types of criminal activity:[11]
  - Criminal activity by a covered person that threatens the other tenants' health, safety, or right to peaceful enjoyment. 42 USC 1437d(*l*)(6); 24 CFR 966.4(*l*)(5)(*ii*)(A).

[10]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page. As a rule, the *Public Housing Guidebook* is referenced only when no other authority applies to the information cited, even though the *Guidebook* contains provisions corresponding to other authority listed.

[11]See 24 CFR 966.4(*l*)(2)(*iv*)(A)-(E) for more examples of what constitutes *other good cause*.

A tenant may be evicted for a covered person's criminal activity "if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction." 24 CFR 966.4(*l*)(5)(*iii*)(A).

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of residents in the immediate vicinity. 24 CFR 966.4(*l*)(5)(*ii*)(A).

- Drug-related criminal activity on or off the premises by a covered person. 42 USC 1437d(*l*)(6); 24 CFR 966.4(*l*)(5)(*i*)(B).

  24 CFR 966.4(*l*)(5)(*i*)(A) requires immediate termination "if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing."

- Tenant's violation of a condition of probation or parole under federal or state law. 42 USC 1437d(*l*)(9)(B);[12] 24 CFR 966.4(*l*)(5)(*ii*)(B).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 42 USC 1437d(*l*)(9)(A);[13] 24 CFR 966.4(*l*)(5)(*ii*)(B).

- Household member's illegal drug use or alcohol abuse, or a pattern of illegal drug use or alcohol abuse, that interferes with the other tenants' health, safety, or right to peaceful enjoyment. 42 USC 1437d(*l*)(8); 42 USC 13662(a)(1)-(2); 24 CFR 966.4(*l*)(5)(*i*)(B) (drugs); 24 CFR 966.4(*l*)(5)(*vi*)(A) (alcohol).

- Household member's false or misleading information regarding illegal drug use, alcohol abuse, or

[12] 42 USC 1437d(*l*)(9) states that such action by a tenant "shall be cause for immediate termination of the tenancy . . . ."

[13] 42 USC 1437d(*l*)(9) states that such action by a tenant "shall be cause for immediate termination of the tenancy . . . ."

rehabilitation of illegal drug users or alcohol abusers. 42 USC 1437d(*l*)(8); 24 CFR 966.4(*l*)(5)(*vi*)(B).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. See 24 CFR 966.4(*l*)(5)(*vii*)(B).

B. Notice of Termination

1. Content

The PHA's notice to the tenant must:

- Be in writing. 42 USC 1437d(*l*)(4); 24 CFR 966.4(*l*)(3)(*i*). The notice must be in a format accessible to a tenant who has a visual impairment. 24 CFR 966.4(k)(2).
- State the specific grounds on which the termination is based. 24 CFR 966.4(*l*)(3)(*ii*).
- Include information about the tenant's right to reply to the notice of termination. 24 CFR 966.4(*l*)(3)(*ii*).
- Inform the tenant of his or her right to look at any documents having to do with the termination. 42 USC 1437d(*l*)(7); 24 CFR 966.4(*l*)(3)(*ii*).
- Contain information about the tenant's right to request a hearing under the PHA's grievance process (if the tenant is entitled to a grievance hearing). 24 CFR 966.4(*l*)(3)(*ii*). See also 24 CFR 966.51. If the tenant is not entitled to a grievance hearing, the notice of termination must so inform the tenant.[14] 24 CFR 966.4(*l*)(3)(*v*)(A). The notice must also inform the tenant that he or she will have the opportunity for a court hearing during the judicial eviction process. 24 CFR 966.4(*l*)(3)(*v*)(B).

[14] In some states, when a lease termination or eviction involves violent or drug-related criminal activity, criminal activity that threatens other residents' health, safety, or right to peaceful enjoyment, or criminal activity resulting in a household member's felony conviction, a PHA is not required to provide a tenant with the opportunity to participate in the grievance process if HUD has determined that state law satisfies "the basic elements of due process . . . before eviction from the dwelling unit." 24 CFR 966.51(a)(2)(*i*). HUD has issued a due process determination to Michigan. See http://www.gpo.gov/fdsys/pkg/FR-1996-03-26/pdf/96-7060.pdf.

2. Manner of Service

Service of an eviction or termination notice may be made in person to the tenant or to an adult member of the household who lives at the residence, *or* service may be made by sending a properly addressed notice to the tenant by first-class mail. 24 CFR 966.4(k)(1)(*i*).

3. Time

- For nonpayment of rent, notice must be given not less than 30 days before the date set for eviction. Note the difference between 42 USC 1437d(*l*)(4)(B) (14 days), and 24 CFR 966.4(*l*)(3)(*i*)(A) (30 days).

- When the health and safety of others is threatened, when drug-related or violent criminal activity has occurred, or when a household member has been convicted of a felony, notice must be given within a reasonable period of time but not more than 30 days before the date set for eviction. 42 USC 1437d(*l*)(4)(A); 24 CFR 966.4(*l*)(3)(i)(B).

- In all other cases of termination, notice must be given not less than 30 days before the date set for eviction (unless state or local law provides for a shorter time period, in which case the shorter period applies). 42 USC 1437d(*l*)(4)(C); 24 CFR 966.4(*l*)(3)(i)(C).

C. Administrative Grievance Procedure

"[E]ach public housing agency receiving [public housing] assistance [must] establish and implement an administrative grievance procedure[.]"[15] 42 USC 1437d(k). See also 24 CFR 966.51(a). A *grievance* is "any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect[s] the individual tenant's rights, duties, welfare or status." 24 CFR 966.53(a). Unless otherwise indicated, the grievance procedure applies to all grievances between an individual tenant and the PHA. 24 CFR 966.51(a)(1). The grievance procedure does not apply to disputes between tenants that do not involve the PHA or to class grievances. 24 CFR 966.51(b).

The PHA may establish an expedited grievance procedure for terminations or evictions that involve criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or

[15]See *Public Housing Guidebook*, pp 208-214, for information regarding the grievance procedure. The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

PHA employees, or that involve drug-related or violent criminal activity on or off the premises. 24 CFR 966.52(a); 24 CFR 966.53(d)(1)-(2).

1. Requirements of the Grievance Process

The grievance process must do all of the following:

- Advise the tenant "of the specific grounds of any proposed adverse [PHA] action[.]" 42 USC 1437d(k)(1).
- Provide the tenant with "an opportunity for a hearing before an impartial party upon timely request within any period applicable under [42 USC 1437d(*l*).]" 42 USC 1437d(k)(2).
- Provide the tenant with "an opportunity to examine any documents or records or regulations related to the proposed action[.]" 42 USC 1437d(k)(3).
- Entitle the tenant "to be represented by another person of their choice at any hearing[.]" 42 USC 1437d(k)(4).
- Entitle the tenant "to ask questions of witnesses and have others make statements on their behalf[.]" 42 USC 1437d(k)(5).
- Entitle the tenant "to receive a written decision by the [PHA] on the proposed action." 42 USC 1437d(k)(6).

2. Submitting a Grievance

a. Informal Discussion

"Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the [tenant] resides so that the grievance may be discussed informally and settled without a hearing." 24 CFR 966.54."The grievance procedure should state how long the PHA and tenant have to set up the meeting (usually ten working days)." *Public Housing Guidebook*, p 209.

After the informal discussion and within a reasonable time (usually five working days), the PHA must prepare a written summary of the discussion. 24 CFR 966.54; *Public Housing Guidebook*, p 209. The summary must contain the participants' names, the meeting date(s), the disposition

proposed, the reasons for the proposed disposition, and the procedure by which the tenant may obtain a hearing if the tenant is not satisfied with the informal discussion. 24 CFR 966.54. One copy of the summary must be given to the tenant, and one must be kept in the tenant's file. *Id*.

b. Hearing

The summary of the informal discussion must "specify the procedures by which a hearing may be obtained if the [tenant] is not satisfied." 24 CFR 966.54. The *Public Housing Guidebook* indicates that "usually five days after receipt of the summary of the informal hearing" is a reasonable time in which to require a tenant to submit a written request for a hearing. *Public Housing Guidebook*, p 210.

"The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing." 24 CFR 966.56(f)(1). A person with a visual impairment must be given any notice required during the grievance process in an accessible format. 24 CFR 966.56(f)(2).

The PHA will appoint an impartial person or persons to conduct the grievance hearing.[16] 24 CFR 966.53(e). The person conducting the hearing may not be the same "person who made or approved the decision under review, or a subordinate of that person." *Id*.

The hearing must be scheduled "promptly for a time and place reasonably convenient to both the [tenant] and the PHA . . . ." 24 CFR 966.56(a). "The PHA's grievance procedure must specify the reasonable time in which the hearing must be held (usually within ten working days of receiving the request for a formal hearing)." *Public Housing Guidebook*, p 212. Written notice of the time, place, and procedures governing the formal hearing must be delivered to the tenant. 24 CFR 966.56(a).

3. Hearing Procedures

The tenant must be given a fair hearing. 24 CFR 966.56(b). A fair hearing requires that a tenant be given:

- "[t]he opportunity to examine before the grievance hearing any PHA documents, including records and

[16]The PHA's lease must describe the PHA's policies for selecting a hearing officer, and changes to those policies are subject to a 30-day comment period. 24 CFR 966.4(n)(2); 24 CFR 966.53(e).

regulations, that are directly relevant to the hearing." 24 CFR 966.56(b)(1). The tenant must be permitted to copy any of those documents at the tenant's own expense. *Id*.

> **Note:** If, in a grievance hearing or a court trial involving a lease termination or eviction, the PHA does not make the required documents available to the tenant at the tenant's request, the PHA may not go forward with the termination or eviction. 24 CFR 966.4(m). In other grievances where the PHA does not make a required document available to a tenant, "the PHA may not rely on such document at the grievance hearing." 24 CFR 966.56(b)(1).

- "[t]he right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf[.]" 24 CFR 966.56(b)(2).
- "[t]he right to a private hearing unless the [tenant] requests a public hearing[.]" 24 CFR 966.56(b)(3).
- "[t]he right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA . . . , and to confront and cross-examine all witnesses upon whose testimony or information the PHA . . . relies[.]" 24 CFR 966.56(b)(4).
- "[a] decision based solely and exclusively upon the facts presented at the hearing." 24 CFR 966.56(b)(5).

At the hearing, the tenant must first show that he or she is entitled to the relief being sought, then "the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed." 24 CFR 966.56(d).

In advance and at the party's own expense, the tenant or the PHA may arrange for a transcript of the hearing, and "[a]ny interested party may purchase a copy of such transcript." 24 CFR 966.56(e).

4. Failure to Appear at a Hearing

If either party fails to appear at the hearing, the hearing may be postponed for not more than five business days or the hearing officer may determine that the absent party waived the right to a hearing. 24 CFR 966.56(c). Both parties must be notified of the officer's determination. *Id*. If the officer determines that the

tenant waived his or her right to a hearing, that determination "will not constitute a waiver of any right the [tenant] may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding." *Id*.

3.4 Privately Owned HUD-Subsidized Project-Based Multifamily Housing[17]

A. Project-Based Section 8 Housing

"The Section 8 Program was authorized by Congress in 1974 and developed by HUD [United States Department of Housing and Urban Development] to provide rental subsidies for eligible tenant families (including single persons) residing in newly constructed, rehabilitated and existing rental and cooperative apartment projects." *Section 8 Program Background Information*.

In project-based assistance programs, the subsidy is attached to the housing. 42 USC 1437f(f)(6); 24 CFR 982.1(b)(1). Under the Project-Based Section 8 Housing Program, the owner of the property is responsible for selecting tenants "subject to compliance by such owner with the applicable income eligibility criteria and certain occupancy requirements, including those pertaining to projects designated for elderly and non-elderly disabled families." *Section 8 Program Background Information*. Additionally, HUD regulations require tenants receiving Section 8 assistance to be United States citizens or noncitizens with a certain immigration status. *Id*.

Project-Based Section 8 Housing includes the New Construction Program, the Substantial Rehabilitation Program, and the Moderate Rehabilitation Program. Notwithstanding the similarity among the types of project-based Section 8 housing programs, the programs are discussed separately due to content and/or authority distinctions, however slight.

1. Grounds for Eviction/Termination of Lease

The reasons for terminating a lease under a project-based Section 8 program are as follows:

- Material noncompliance with the lease provisions. 42 USC 1437f(d)(1)(B)(*i*); 24 CFR 247.3(a)(1). See 24 CFR 247.3(c) for examples of material noncompliance.

[17] See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh for information about multifamily housing.

- Material failure to comply with any state landlord-tenant act or any applicable federal, state, or local law. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 247.3(a)(2).

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(1); 24 CFR 247.3(a)(3).

  A tenant may be evicted for a covered person's criminal activity "if [the landlord] determine[s] that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity." 24 CFR 5.861.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(2); 24 CFR 247.3(a)(3).

- Drug-related criminal activity on or near the premises by a covered person. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.858; 24 CFR 247.3(a)(3).

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 247.3(a)(3).

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 42 USC 1437f(d)(1)(B)(*v*)(II); 24 CFR 5.859(b)(2); 24 CFR 247.3(a)(3).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 42 USC 1437f(d)(1)(B)(*v*)(I); 24 CFR 5.859(b)(1); 24 CFR 247.3(a)(3).

- Other good cause. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 247.3(a)(4). A tenant's conduct cannot be considered other good cause unless the landlord has given the tenant prior notice that the conduct at issue would thereafter constitute a reason for termination. 24 CFR 247.3(b).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

"The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of [24 CFR 247.1 to 24 CFR 247.7]." 24 CFR 247.6(a).

"In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant[.]" 24 CFR 247.6(b). The landlord may, however, rely on grounds about which he or she was unaware at the time the notice was sent. *Id*.

"A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by [24 CFR 247.1 to 24 CFR 247.7], except where such State or local law has been preempted[.]" 24 CFR 247.6(c).

2. Notice of Termination

a. Content

A landlord must comply with the notice requirements in both federal law and state law. 24 CFR 247.6(a). In general, federal law requires that the notice of termination:

- be in writing. 24 CFR 247.4(a). The notice must be in an accessible format for tenants with a disability. *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (May 2003, revised with CHG-2, effective June 2007, and CHG-3, effective June 2009), p 8-14 (hereafter referred to as *Handbook 4350.3*).
- state the date of termination. 24 CFR 247.4(a).
- state the reasons for termination with sufficient detail to allow the tenant to prepare a defense. *Id*.
- inform the tenant that if he or she remains in the residence on the date of termination, the landlord is limited to the judicial process to enforce the termination, and that the tenant will have the right to present a defense during the judicial process. *Id*.

- advise the tenant that he or she has ten days in which to discuss the termination with the landlord. *Handbook 4350.3*, p 8-14.[18]

- state that a person with disabilities may ask that reasonable accommodations be made so that he or she can participate in the hearing process. *Id*.

b. Manner of Service

Notice of termination must be served on the tenant by first-class mail *and* by leaving a copy with any adult at the tenant's residence. 24 CFR 247.4(b). If no adult is present, a copy of the notice must be slipped under or through the door or attached to the door. *Id*.

c. Time

- Notice of termination for other good cause must be given no less than 30 days before the effective date of termination. 24 CFR 247.4(c).

- Timing of a termination notice based on material noncompliance or material failure to comply with the requirements of state landlord-tenant law is governed by terms of the lease and state law. *Id*.

B. New Construction and Substantial Rehabilitation

"The New Construction and Substantial Rehabilitation Programs provide rental assistance in connection with the development of newly constructed or substantially rehabilitated privately owned rental housing[.]" *Section 8 Program Background Information*. The New Construction and Substantial Rehabilitation Programs are examples of Project-Based Section 8 Housing.

1. Grounds for Eviction/Termination of Lease

A lease under the New Construction and Substantial Rehabilitation Programs may be terminated for the following reasons:

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[18] *Handbook 4350.3* applies to Section 8 Project-Based housing, New Construction, Substantial Rehabilitation, Rural Housing with Section 8, Section 202 housing, Section 811 housing, Section 221 housing, and Section 236 housing. *Handbook 4350.3* does not apply to Moderate Rehabilitation, Public Housing, or the Housing Choice Voucher Program. See *Handbook 4350.3*, p 1-2, Figure 1-1. As a rule, *Handbook 4350.3* is referenced only when no other authority applies to the information cited, even though *Handbook 4350.3* contains provisions corresponding to other authority listed.

- Material noncompliance with the lease provisions. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 880.607(b)(1)(*i*);[19] 24 CFR 881.601.[20] See 24 CFR 880.607(b)(3) for examples of material noncompliance.

- Material failure to comply with any state landlord-tenant act or any applicable federal, state, or local law. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 880.607(b)(1)(*ii*); 24 CFR 881.601.

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(1); 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

  A tenant may be evicted for a covered person's criminal activity "if [the landlord] determine[s] that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity." 24 CFR 5.861.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(2); 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

- Drug-related criminal activity on or near the premises by a covered person. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.858; 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 42 USC 1437f(d)(1)(B)(*v*)(II); 24 CFR 5.859(b)(2); 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

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[19]Citations to 24 CFR Part 880 refer to the New Construction Program.

[20]Citations to 24 CFR 881.601 refer to the Substantial Rehabilitation Program. 24 CFR 881.601 (Substantial Rehabilitation) states that all of the provisions of 24 CFR 880.607 (New Construction) also apply to Substantial Rehabilitation, subject to 24 CFR 881.104 (effective date of Part 881 and its applicability to projects established before that date).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 42 USC 1437f(d)(1)(B)(*v*)(I); 24 CFR 5.859(b)(1); 24 CFR 880.607(b)(1)(*iii*); 24 CFR 881.601.

- Other good cause. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 880.607(b)(1)(*iv*); 24 CFR 881.601. A tenant's conduct cannot be considered other good cause unless the landlord has given the tenant prior notice that the conduct at issue would thereafter constitute a reason for termination. 24 CFR 880.607(b)(2); 24 CFR 881.601.

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

2. Notice of Termination

a. Content

The notice of termination must:

- be in writing. 24 CFR 880.607(c)(1); 24 CFR 881.601. The notice must be in an accessible format for a person with a disability. *Handbook 4350.3*, p 8-14.

- specify the date for termination. 24 CFR 880.607(c)(1); 24 CFR 881.601.

- contain the grounds for termination. *Id*.

- advise the tenant that if he or she remains in the unit on the date scheduled for termination, the owner may start the judicial process of eviction, and that the tenant may defend against the eviction in court. *Handbook 4350.3*, p 8-14.

- advise the tenant that he or she has ten days in which to discuss the termination with the landlord. 24 CFR 880.607(c)(1); 24 CFR 881.601; *Handbook 4350.3*, p 8-14.

- state that a person with disabilities may ask that reasonable accommodations be made so that he or she can participate in the hearing process. *Handbook 4350.3*, p 8-14.

"In any judicial action instituted to evict the [tenant], the owner may not rely on any grounds which are different from the reasons set forth in the notice." 24 CFR 880.607(c)(3); 24 CFR 881.601.

b. Manner of Service

No manner of service is specified in the applicable federal regulations. Therefore, the manner of service must comply with applicable state and local laws. *Handbook 4350.3*, p 8-15.

c. Time

- When a notice of termination is issued for other good cause, the notice must state that termination is effective at the end of a lease term according to the lease provisions, but no less than 30 days after the tenant's receipt of notice. 24 CFR 880.607(c)(2); 24 CFR 881.601.

- Where the termination of the lease is for material noncompliance with the terms of the lease or for material failure to comply with state landlord-tenant law, the time requirements must satisfy the lease provisions and applicable state law. *Id*.

C. Moderate Rehabilitation

"The [M]oderate [R]ehabilitation [P]rogram provides project-based rental assistance for low income families. The [P]rogram was repealed in 1991 and no new projects are authorized for development. Assistance is limited to properties previously rehabilitated[.]" *Moderate Rehabilitation*. See also 24 CFR 882.101(b). The Program was designed to upgrade existing housing units in need of moderate rehabilitation. *Moderate Rehabilitation*. The Moderate Rehabilitation Program is another project-based Section 8 program.

1. Grounds for Eviction/Termination of Lease

- Material noncompliance with the lease provisions (serious or repeated violations). 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 247.3(a)(1); 24 CFR 882.511(c)(1). See 24 CFR 247.3(c) for examples of material noncompliance.

- Material failure to comply with any state landlord-tenant act or any applicable federal, state, or local law.

42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 247.3(a)(2); 24 CFR 882.511(c)(2).

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(1); 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(1).

  A tenant may be evicted for a covered person's criminal activity "if [the landlord] determine[s] that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity." 24 CFR 5.861.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.859(a)(2); 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(1).

- Drug-related criminal activity on or near the premises by a covered person. 42 USC 1437f(d)(1)(B)(*iii*); 24 CFR 5.858; 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(2).

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(2).

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 42 USC 1437f(d)(1)(B)(*v*)(II); 24 CFR 5.859(b)(2); 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(1).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 42 USC 1437f(d)(1)(B)(*v*)(I); 24 CFR 5.859(b)(1); 24 CFR 247.3(a)(3); 24 CFR 882.511(a)(1).

- Other good cause. 42 USC 1437f(d)(1)(B)(*ii*); 24 CFR 247.3(a)(4); 24 CFR 882.511(c)(3). A tenant's conduct cannot be considered other good cause unless the landlord has given the tenant prior notice that the conduct at issue would thereafter constitute a reason for termination. 24 CFR 247.3(b).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

"The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of [24 CFR 247.1 to 24 CFR 247.7]." 24 CFR 247.6(a).

"In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant[.]" 24 CFR 247.6(b). The landlord may, however, rely on grounds about which he or she was unaware at the time the notice was sent. *Id*.

"A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by [24 CFR 247.1 to 24 CFR 247.7], except where such State or local law has been preempted[.]" 24 CFR 247.6(c).

2. Notice of Termination

a. Content

The notice of termination must:

- be in writing. 24 CFR 247.4(a); 24 CFR 882.511(d)(1).
- state the date the lease is to terminate. 24 CFR 247.4(a); 24 CFR 882.511(d)(1).
- list the reasons for the termination with sufficient detail to allow the tenant to prepare a defense. 24 CFR 247.4(a); 24 CFR 882.511(d)(2)(*i*).
- inform the tenant that he or she may present a defense at any judicial proceeding instituted for the eviction. 24 CFR 247.4(a); 24 CFR 882.511(d)(2)(*ii*).

b. Manner of Service

According to 24 CFR 882.511(d)(2)(*iii*), notice must be served on the tenant either by mailing a properly addressed letter to the tenant at his or her residence by first-class mail, return receipt requested, *or* by delivering the notice to the tenant at his or her residence.

Committee Tip:

However, 24 CFR 247.4(b) also applies to Moderate Rehabilitation. See 24 CFR 247.1, which states that 24 CFR Part 247, Subpart A, applies to subsidized projects as defined in 24 CFR 247.2. 24 CFR 247.2 defines subsidized project as specifically including project-based Section 8 housing with the exception of specifically named project-based Section 8 housing; Moderate Rehabilitation is not excluded. 24 CFR 247.4(b) requires that notice be given both by first-class mail and in person to the tenant or to an adult who answers the door at the tenant's residence. In keeping with the standard that a tenant is entitled to the greater of two protections, the committee suggests effecting both manners of service as required by 24 CFR 247.4(b).

c. Time

- When termination is based on nonpayment of rent, the notice must be served not less than five days before the date of termination. 24 CFR 882.511(d)(1)(*i*).

- When termination is based on serious or repeated violations of lease terms or on a violation of federal, state, or local law, state or local law governs the time requirements of the notice. 24 CFR 882.511(d)(1)(*ii*).

- When termination is based on other good cause, notice must be served not less than 30 days before the date set for termination. 24 CFR 247.4(c); 24 CFR 882.511(d)(1)(*iii*).

- When termination is based on material noncompliance or material failure to comply with the requirements of state landlord-tenant law, the terms of the lease and state law govern the time requirements of notice. 24 CFR 247.4(c).

D. Housing for the Elderly (Section 202) and Housing for People With Disabilities (Section 811)

1. In General

a. Section 202—Elderly

"The Section 202 [P]rogram helps expand the supply of affordable housing with supportive services for the elderly. It provides very low[]income elderly with options that allow them to live independently but in an environment that provides support activities such as cleaning, cooking, transportation, etc." *Section 202 Supportive Housing for the Elderly Program*. See also 12 USC 1701q(a). Section 202 housing for the elderly is an example of privately owned HUD-subsidized project-based multifamily housing.

"The term 'elderly person' means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy." 12 USC 1701q(k)(1).

b. Section 811—People with Disabilities

42 USC 8013(a) states the purpose of Section 811:

> The purpose of [Section 811] is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that—
>
> > (1) is designed to accommodate the special needs of such persons;
> >
> > (2) makes available supportive services that address the individual health, mental health, and other needs of such persons; and
> >
> > (3) promotes and facilitates community integration for people with significant and long-term disabilities.

See also *Section 811 Supportive Housing for Persons with Disabilities*. Section 811 is another example of privately owned HUD-subsidized project-based multifamily housing.

> "The term 'person with disabilities' means a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability." 42 USC 8013(k)(2).

2. Grounds for Eviction/Termination of Lease

The reasons for terminating a Section 202 or Section 811 lease are as follows:

- Material noncompliance with the lease provisions (serious or repeated violations). 42 USC 8013(i)(2)(B)(*i*); 24 CFR 247.3(a)(1); 24 CFR 891.430(b). See 24 CFR 247.3(c) for examples of material noncompliance.

- Material failure to comply with any state landlord-tenant act. 24 CFR 247.3(a)(2); 24 CFR 891.430(b).

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.859(a)(1); 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

  > A tenant may be evicted for a covered person's criminal activity "if [the landlord] determine[s] that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity." 24 CFR 5.861.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 24 CFR 5.859(a)(2); 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

- Drug-related criminal activity on or near the premises by a covered person. 24 CFR 5.858; 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 24 CFR 5.859(b)(2); 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 24 CFR 5.859(b)(1); 24 CFR 247.3(a)(3); 24 CFR 891.430(a)-(b).

- Tenant's violation of applicable federal, state, or local law. 42 USC 8013(i)(2)(B)(*i*).

- Other good cause. 42 USC 8013(i)(2)(B)(*i*); 24 CFR 247.3(a)(4); 24 CFR 891.430(b). A tenant's conduct cannot be considered other good cause unless the landlord has given the tenant prior notice that the conduct at issue would thereafter constitute a reason for termination. 24 CFR 247.3(b).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

3. Notice of Termination

a. Content

A landlord must comply with the notice requirements in both federal law and state law. 24 CFR 247.6(a); 24 CFR 891.430(b). In general, federal law requires that the notice of termination:

- be in writing. 42 USC 8013(i)(2)(B)(*ii*); 24 CFR 247.4(a); 24 CFR 891.430(b). The notice must be in an accessible format for a person with a disability. *Handbook 4350.3*, p 8-14.

- state the date of termination. 24 CFR 247.4(a); 24 CFR 891.430(b).

- state the reasons for termination with sufficient detail to allow the tenant to prepare a defense. *Id*.

- inform the tenant that if he or she remains in the residence on the date of termination, the landlord is limited to the judicial process to enforce the termination, and that the tenant will have the right to present a defense during the judicial process. *Id*.

- advise the tenant that he or she has ten days in which to discuss the termination with the landlord. *Handbook 4350.3*, p 8-14.

- state that a person with disabilities may ask that reasonable accommodations be made so that he or she can participate in the hearing process. *Id*.

"In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant[.]" 24 CFR 247.6(b). The landlord may, however, rely on grounds about which he or she was unaware at the time the notice was sent. *Id*.

"A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by [24 CFR 247.1 to 24 CFR 247.7], except where such State or local law has been preempted[.]" 24 CFR 247.6(c); 24 CFR 891.430(b).

b. Manner of Service

The notice of termination should be served personally *and* by first-class mail. *Handbook 4350.3*, p 8-15. The landlord should send by first-class mail a properly addressed letter that includes a return address. *Id*. The landlord should also serve a copy of the notice on any adult who answers the door of the residence or, if no adult answers, the landlord should put a copy of the notice under or through the door or attach it to the door. *Id*.

c. Time

- Termination for other good cause requires at least a 30-day notice. 24 CFR 247.4(c); 24 CFR 891.430(b).

- Timing of service for a termination notice based on material noncompliance or material failure to comply with the requirements of state landlord-tenant law is governed by terms of the lease and state law. *Id*.

E. HUD Insured/Guaranteed Mortgages (Section 221 and Section 236)

1. In General

a. Section 221 Program

"[The Section 221 Program] insured and subsidized mortgage loans to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for low- and moderate-income families. The reduced mortgage interest rate [below market interest rate or BMIR] . . . resulted in lower operating costs for these projects and therefore reduced rents." *Handbook 4350.3*, p 1-3. See 12 USC 1715*l*(a). See also *Mortgage Insurance for Rental and Cooperative Housing: Section 221(d)(3) and Section 221(d)(4)*.

"[Section 221] no longer provides subsidies for new mortgage loans, but existing Section 221 . . . BMIR properties continue to operate under the [P]rogram." *Handbook 4350.3*, p 1-3. See 24 CFR 221.1. Many Section 221 properties receive project-based Section 8 assistance.

b. Section 236 Program

"The Section 236 [P]rogram . . . combined federal mortgage insurance with interest reduction payments to the mortgagee for the production of low-cost rental housing. . . . The interest reduction payment results in lower operating costs and subsequently a reduced rent structure." *Handbook 4350.3*, p 1-4. See 12 USC 1715z-1(a).

"[The Section 236 P]rogram no longer provides insurance or subsidies for new mortgage loans, but existing Section 236 properties continue to operate under the [P]rogram." *Handbook 4350.3*, p 1-4. Many Section 236 properties receive project-based Section 8 assistance.

2. Grounds for Eviction/Termination of Lease

A lease under Section 221 or Section 236 may be terminated for the following reasons:

- Material noncompliance with the lease provisions (serious or repeated violations). 24 CFR 247.3(a)(1). See 24 CFR 247.3(c) for examples of material noncompliance.

- Material failure to comply with any state landlord-tenant act. 24 CFR 247.3(a)(2).

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.859(a)(1); 24 CFR 247.3(a)(3).

  A tenant may be evicted for a covered person's criminal activity "if [the landlord] determine[s] that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity." 24 CFR 5.861.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 24 CFR 5.859(a)(2); 24 CFR 247.3(a)(3).

- Drug-related criminal activity on or near the premises by a covered person. 24 CFR 5.858; 24 CFR 247.3(a)(3).

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 247.3(a)(3).

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 24 CFR 5.859(b)(2); 24 CFR 247.3(a)(3).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 24 CFR 5.859(b)(1); 24 CFR 247.3(a)(3).

- Other good cause. 24 CFR 247.3(a)(4). A tenant's conduct cannot be considered other good cause unless the landlord has given the tenant prior notice that the conduct at issue would thereafter constitute a reason for termination. 24 CFR 247.3(b).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

"The landlord shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of [24 CFR 247.1 to 24 CFR 247.7]." 24 CFR 247.6(a).

"In any judicial action instituted to evict the tenant, the landlord must rely on grounds which were set forth in the termination notice served on the tenant[.]" 24 CFR 247.6(b). The landlord may, however, rely on grounds about which he or she was unaware at the time the notice was sent. *Id*.

"A tenant may rely on State or local law governing eviction procedures where such law provides the tenant procedural rights which are in addition to those provided by [24 CFR 247.1 to 24 CFR 247.7], except where such State or local law has been preempted[.]" 24 CFR 247.6(c).

3. Notice of Termination

a. Content

A landlord must comply with the notice requirements in both federal law and state law. 24 CFR 247.6(a). Federal law requires that the notice of termination:

- be in writing. 24 CFR 247.4(a). The notice must be in an accessible format for a person with a disability. *Handbook 4350.3*, p 8-14.
- state the date of termination. 24 CFR 247.4(a).
- state the reasons for termination with sufficient detail to allow the tenant to prepare a defense. *Id*.
- inform the tenant that if he or she remains in the residence on the date of termination, the landlord is limited to the judicial process to enforce the termination, and that the tenant will have the right to present a defense during the judicial process. *Id*.
- advise the tenant that he or she has ten days in which to discuss the termination with the landlord. *Handbook 4350.3*, p 8-14.
- state that a person with disabilities may ask that reasonable accommodations be made so that he or she can participate in the hearing process. *Id*.

b. Manner of Service

The notice of termination should be served personally *and* by first-class mail. *Handbook 4350.3*, p 8-15. The landlord should send by first-class mail a properly addressed letter that includes a return address. *Id*. The landlord should also "[d]eliver[] a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door." *Id*.

c. Time

- Termination for other good cause requires at least a 30-day notice. 24 CFR 247.4(c).
- Timing of service for a termination notice based on material noncompliance or material failure to comply with the requirements of state landlord-tenant law is governed by terms of the lease and state law. *Id*.

3.5 Section 8 Housing Choice Voucher (HCV) Program[21]

A. In General

The Housing Choice Voucher (HCV) Program assists very low income families, the elderly, and people with disabilities to select and lease or purchase affordable housing in the private market; "[it] is the federal government's major [housing subsidy] program[.]" *Housing Choice Vouchers Fact Sheet*.

The HCV Program is a tenant-based assistance program administered by a local public housing agency (PHA) (PHAs are called *housing commissions* in Michigan, MCL 125.654) and funded by HUD (United States Department of Housing and Urban Development). 24 CFR 982.1(a)(1); *Housing Choice Vouchers Fact Sheet*. Because the housing subsidy is tenant-based, an HCV participant's housing choices extend beyond units located in subsidized housing projects; a participant may choose any housing that satisfies the Program standards of health and safety and rent reasonableness. 24 CFR 982.1(a)(2); *Housing Choice Vouchers Fact Sheet*. The PHA pays a housing subsidy directly to the landlord, and the participant pays the difference between the

[21] For a history of the Housing Choice Voucher Program, see *HUD Housing Choice Voucher Program Guidebook 7420.10G* (April 2001), pp 1-1 to 1-4 (hereafter referred to as *Guidebook 7420.10G*). The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

subsidy amount and the amount of the actual rent charged. 24 CFR 982.1(b)(2); *Housing Choice Vouchers Fact Sheet*. "Subsidy in the HCV program is based on a local 'payment standard' that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent." 24 CFR 982.1(a)(3).

The housing voucher is portable nationwide, and "[t]he [H]ousing [C]hoice [V]oucher [P]rogram is designed to allow families to move without the loss of housing assistance." *Housing Choice Vouchers Fact Sheet*. An HCV participant may move as long as the participant notifies the PHA before moving, terminates the lease on the participant's current residence according to the provisions of the lease, and finds a new residence that meets HCV Program requirements. 24 CFR 982.1(b)(2); *Housing Choice Vouchers Fact Sheet*.

"Eligibility for a housing voucher is determined by the PHA based on the total annual gross income and family size and is limited to U[nited]S[tates] citizens and specified categories of non-citizens who have eligible immigration status." *Housing Choice Vouchers Fact Sheet*.

B. Grounds for Eviction/Termination of Lease

A landlord may terminate an HCV tenant's lease for the following reasons:

- Serious or repeated violations of the lease terms. 42 USC 1437f(o)(7)(C); 24 CFR 982.310(a)(1).
- Violation of applicable federal, state, or local law. 42 USC 1437f(o)(7)(C); 24 CFR 982.310(a)(2).
- Criminal activity by a covered person that threatens the health, safety, or peaceful enjoyment of the other residents. 42 USC 1437f(o)(7)(D); 24 CFR 982.310(c)(2)(*i*)(A).

  > The [landlord] may terminate tenancy and evict by judicial action a family for criminal activity by a covered person . . . if the owner determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. [24 CFR 982.310(c)(3).]

- Violent criminal activity by a covered person on or near the premises. 42 USC 1437f(o)(7)(D); 24 CFR 982.310(c)(2)(*i*)(C).

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of people living in the immediate vicinity. 42 USC 1437f(o)(7)(D); 24 CFR 982.310(c)(2)(*i*)(B).

- Drug-related criminal activity on or near the premises by a covered person. 42 USC 1437f(o)(7)(D); 24 CFR 982.310(c)(1).

- Household member's illegal drug use or pattern of illegal drug use, if it threatens the other residents' health, safety, or peaceful enjoyment. 24 CFR 982.310(c)(1).

- Tenant's or household member's violation of federal or state probation or parole. 24 CFR 982.310(c)(2)(*ii*)(B).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 24 CFR 982.310(c)(2)(*ii*)(A).

- Other good cause. 42 USC 1437f(o)(7)(C); 24 CFR 982.310(a)(3). Examples of other good cause appear at 24 CFR 982.310(d)(1).

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 982.310(h)(1). 24 CFR 982.310(h) contains a list of considerations for the landlord's decision-making process.

C. Notice of Termination

1. Content

A notice of termination must:

- be in writing. 42 USC 1437f(o)(7)(E); 24 CFR 982.5; 24 CFR 982.310(e)(1)(*i*). The landlord must also provide the PHA with a copy of the notice. 24 CFR 982.310(e)(2)(*ii*).

- specify the grounds for eviction. 42 USC 1437f(o)(7)(E); 24 CFR 982.5; 24 CFR 982.310(e)(1)(*i*).

- state that the landlord may enforce the eviction only through a court action. 24 CFR 982.310(f).

2. Manner of Service

Federal law and regulations do not specify a manner of service for the notice of termination. Therefore, the terms of the lease and applicable state law govern the manner of service.

3. Time

- Federal regulations require only that notice of termination be given at or before the landlord begins the eviction process. 24 CFR 982.310(e)(1)(*i*).

- Other time requirements of the notice are governed by the terms of the lease and by state law.

D. Informal Hearing to Review a PHA's Decision to Terminate a Tenant's HCV Program Assistance

Because a PHA's decision to terminate a tenant's *assistance* may ultimately result in the landlord's attempt to evict the tenant, the process in place for reviewing a PHA's decision to terminate an HCV tenant's assistance is discussed here.

1. Reasons for Termination of Assistance

An HCV tenant's assistance may be terminated for many of the same reasons an HCV tenant's lease may be terminated, and a tenant is entitled to an informal hearing to review the PHA's decision. See 24 CFR 982.551–24 CFR 982.555 and *Guidebook 7420.10G*,[22] Chapter 16. A tenant's assistance may be terminated under the following circumstances:[23]

- Household member's illegal drug use. 24 CFR 982.553(b)(1)(*i*)(A).

- Household member's pattern of illegal drug use that interferes with other residents' health, safety, or right to peaceful enjoyment. 24 CFR 982.553(b)(1)(*i*)(B).

[22]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[23]A tenant's assistance may also be terminated for reasons not listed here. See 24 CFR 982.552(b)-(c). The reasons for termination of assistance listed here are limited to those reasons that correspond with the reasons listed for terminating a tenant's lease.

- Household member violates the obligations contained in 24 CFR 982.551(*l*)-(m) (prohibition against engaging in drug-related, violent, or other criminal activity "that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity" and prohibition against abusing alcohol "in a way that threatens [or may threaten] the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity"). 24 CFR 982.553(b)(1)(*iii*); 24 CFR 982.553(b)(2); 24 CFR 982.553(b)(3). See also 24 CFR 982.552(c)(1)(*x*).

  > The PHA may terminate assistance for criminal activity by a household member as authorized in [24 CFR 982.553] if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity. [24 CFR 982.553(c).]

"The PHA must terminate [HCV P]rogram assistance for a [tenant] evicted from housing assisted under the [HCV] [P]rogram for serious violation of the lease." 24 CFR 982.552(b)(2).

"The PHA must immediately terminate assistance . . . if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing." 24 CFR 982.553(b)(1)(*ii*).

A tenant's assistance may also be terminated "because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules." 24 CFR 982.555(a)(1)(v); see also 24 CFR 982.312(b) ("Housing assistance payments terminate if the family is absent for longer than the maximum period permitted."). "The family must promptly notify the PHA of absence from the unit." 24 CFR 982.551(i). See also 24 CFR 982.551(h)(1) ("The family must use the assisted unit for residence by the family. The unit must be the family's only residence."); *Frye v Mich State Housing Dev Auth*, ___ Mich App ___, ___ (2026) (quoting 24 CFR 982.551(h) and (i) and noting "a dispute whether [the tenant] violated any specific program rules regarding use and occupancy of the rental unit").

2. Notice of Right to Informal Hearing

A tenant is entitled to an informal hearing when a PHA has decided to terminate the tenant's assistance under the HCV Program because of the tenant's action or failure to act as specified in 24 CFR 982.552 or 24 CFR 982.553. 24 CFR 982.552(a)(1). At the hearing, the PHA hearing officer must "consider whether the [] PHA decisions relating to the individual circumstances of a [tenant] are in accordance with the law, HUD regulations and PHA policies[.]" 24 CFR 982.555(a)(1). When a tenant is entitled to a hearing because the PHA has decided to terminate assistance due to a tenant's action or failure to act, "the PHA must give the [tenant] prompt written notice that the [tenant] may request a hearing."[24] 24 CFR 982.555(c)(2).

> The notice must:
>
> > (*i*) Contain a brief statement of reasons for the decision [to terminate assistance],
> >
> > (*ii*) State that if the [tenant] does not agree with the decision, the [tenant] may request an informal hearing on the decision, and
> >
> > (*iii*) State the deadline for the [tenant] to request an informal hearing. [24 CFR 982.555(c)(2).]

"The PHA has latitude in establishing reasonable timeframes for [tenants] to request a . . . hearing." *Guidebook 7420.10G*, p 16-1.[25]

When a PHA has decided to terminate a tenant's housing assistance payments (HAP) because of the family's action or failure to act, or because the family has been absent from the assisted unit for longer than the maximum period permitted, "the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract." 24 CFR 982.555(a)(1)(iv)-(v); 24 CFR 982.555(a)(2). The PHA "must administer the program in accordance with the PHA Administrative Plan." 24 CFR 982.54(c). "'An agency is under a duty to follow its own rules.'" *Frye v Mich State Housing Dev Auth*, ___ Mich App ___, ___ (2026), quoting *Detroit Base Coalition for the Human Rights of the Handicapped v Dep't of Social Servs*, 431 Mich 172, 189 (1988). "Participation in a public housing program

[24] Different notice requirements apply to different reasons for termination. See 24 CFR 982.555(c)(1).

[25] The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

is a property interest protected by due process." *Frye*, ___ Mich App at ___. "'To comport with due process, notice, when required, must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id*. at ___, quoting *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 287-288 (2013). In addition, the "'means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice.'" *Frye*, ___ Mich App at ___, quoting *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509 (2008). Under that standard, the "'reasonableness of a particular method could vary, depending on what information the government had.'" *Frye*, ___ Mich App at ___, quoting *Sidun*, 481 Mich at 510.

In *Frye*, the PHA's notice "stated that [the tenant's] rental assistance was terminated on August 31, 2022, which was 13 days *before* the notice was issued." *Frye*, ___ Mich App at ___. The PHA in *Frye* was the Michigan State Housing Development Authority (MSHDA), and "HUD regulations and MSHDA's Administrative Plan require[d] that the notice be provided *before* termination from the voucher program." *Id*. at ___. "MSHDA's policy is to provide the notice 30 days before the termination." *Id*. at ___. The *Frye* Court also observed that apart from the date on the notice, "there [was] no other documentation to establish that the notice was actually sent to [the tenant]," and that "the existing record support[ed] the inference that [the tenant] never received the termination notice." *Id*. at ___. In addition, MSHDA terminated the tenant's assistance because it contended that she had moved out of the unit, yet the notice was addressed to that unit, which "raise[d] the question whether the notice was reasonably calculated to apprise [the tenant] of the termination and afford her an opportunity to present her objections." *Id*. at ___. According to the *Frye* Court, "The factual record regarding the sufficiency of the notice need[ed] to be developed to assess whether proper notice was ever sent and whether [the tenant] was properly denied an informal hearing." *Id*. at ___. In light of the insufficient record, the *Frye* Court could not "determine whether MSHDA's actions ha[d] deprived [the tenant] of her constitutional right to due process." *Id*. at ___ (remanding for further development of the administrative record). For discussion of the *Frye* Court's holding that the circuit court had jurisdiction over the tenant's appeal, see Section 3.5(D)(6).

3. Informal Hearing Process

When an informal hearing is required, "the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the [tenant]."[26] 24 CFR 982.555(d).

a. Examination of Documents

The tenant is entitled to examine documents possessed by the PHA in anticipation of the hearing.

- "The [tenant] must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The [tenant] must be allowed to copy any such document at the [tenant's] expense. If the PHA does not make the document available for examination on request of the [tenant], the PHA may not rely on the document at the hearing." 24 CFR 982.555(e)(2)(*i*).

The PHA may be entitled to examine a tenant's relevant documents.

- "The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any [tenant] documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the [tenant] does not make the document available for examination on request of the PHA, the [tenant] may not rely on the document at the hearing." 24 CFR 982.555(e)(2)(*ii*).

b. Representation

"At its own expense, the family may be represented by a lawyer or other representative." 24 CFR 982.555(e)(3).

c. Hearing Officer

"The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person." 24 CFR 982.555(e)(4)(*i*).

[26] "The [PHA's] administrative plan must state the PHA procedures for conducting informal hearings for [HCV tenants]." 24 CFR 982.555(e)(1).

> "The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures." 24 CFR 982.555(e)(4)(*ii*).

d. Evidence

> "The PHA and the [tenant] must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 CFR 982.555(e)(5).

4. Issuance of Decision

The hearing officer must issue a decision in writing that briefly states his or her reasons for the decision. 24 CFR 982.555(e)(6). The hearing officer's factual determinations about the tenant's individual circumstances must "be based on a preponderance of the evidence presented at the hearing." *Id*. The tenant must be promptly furnished with a copy of the decision. *Id*.

5. Effect of Decision

The hearing officer's decision does not bind the PHA under certain circumstances.

- "The PHA is not bound by a hearing decision[] . . . [c]oncerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under [24 CFR 982.555], or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures." 24 CFR 982.555(f)(1).

- "The PHA is not bound by a hearing decision . . . [c]ontrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law." 24 CFR 982.555(f)(2).

"If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the [tenant] of the determination, and of the reasons for the determination." 24 CFR 982.555(f)(3).

6. Judicial Review of a PHA's Decision

When the PHA is a state agency, such as the Michigan State Housing Development Authority (MSHDA), the Administrative Procedures Act (APA), MCL 24.201 *et seq*., applies to its decisions

because, for purposes of the APA, an agency is "a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action." MCL 24.203(2). Under the APA, "[w]hen a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law." MCL 24.301. A contested case is "a proceeding . . . in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3). "In a contested case, when the factual record created before the administrative tribunal is insufficient to address the plaintiff's claims, the prudent course of action is to remand the case to the administrative agency with instructions to 'further develop the administrative record.'" *Frye v Mich State Housing Dev Auth*, ___ Mich App ___, ___ (2026), quoting *Hicks v Dep't of Commerce*, 220 Mich App 501, 510 (1996); see also MCL 24.305.

In *Frye*, the Court of Appeals concluded that the termination of a tenant's HCV assistance by MSHDA was a contested case because "the HUD regulations require the PHA to give a participant an opportunity for an informal hearing *before* terminating housing assistance." *Frye*, ___ Mich App at ___. MSHDA's e-mail denying the tenant's late request for an informal hearing did not include the findings of fact and conclusions of law required by MCL 24.285, "[b]ut this defect [did] not affect the finality of the decision." *Frye*, ___ Mich App at ___. The *Frye* Court concluded that the circuit court had jurisdiction over the tenant's appeal because she had "exhausted all available administrative remedies and was aggrieved by MSHDA's final decision to deny her an informal hearing regarding its termination of her housing assistance in this contested case." *Id*. at ___ (remanding for the circuit court to "order the taking of additional evidence before the agency regarding whether [the tenant] received sufficient proper notice and was entitled to an informal hearing").

E. Project-Based Voucher Program

The Project-Based Voucher (PBV) Program is a Section 8 program related to the HCV Program because funding for the PBV Program derives from a PHA's funding for its HCV Program. *Project[-]Based Vouchers—Frequently Asked Questions*.[27] A PHA may designate up to 20 percent of its housing choice vouchers for use as project-based vouchers for specific housing units. *Id*.

However, unlike the HCV Program, where the assistance is awarded to the tenant and moves with the tenant if the tenant moves, PBV Program assistance is attached to the housing units a landlord has contracted with the PHA to set aside for use in the PBV Program. *Project[-]Based Vouchers—Frequently Asked Questions*.[28] PBV voucher recipients are individuals or families on the PHA's waiting list for housing choice vouchers that the PHA refers to a landlord to fill vacancies in the units specified for PBV assistance. *Id*. An individual or family who moves from a unit assisted under the PBV Program "does not have any right to continued housing assistance[, but] they may be eligible for a tenant[-]based voucher when one becomes available." *Id*.

In general, the same reasons for terminating the lease or evicting an HCV tenant also apply to a PBV tenant. See 24 CFR 983.257 (24 CFR 982.310, the regulation that applies to terminating the tenancies of HCV tenants, also applies to PBV tenants). In addition to 24 CFR 982.310, 24 CFR 5.858–24 CFR 5.861 also apply to terminating the tenancies of PBV tenants. Furthermore, the notice requirements that apply to PBV tenants are the same as those that apply to HCV tenants. 24 CFR 982.310(e)-(f); 24 CFR 983.257.

3.6 Rural Housing (Section 515)

A. In General

Rural Housing is "affordable multifamily rental housing for very low-, low-, and moderate-income families, elderly persons, and persons with disabilities." *Rural Rental Housing Loans (Section 515)*.[29] See also 42 USC 1485(a); 7 CFR 3560.1(a). The affordable rental housing is made possible through the Rural Rental Housing Loan Program, which "is primarily a direct housing mortgage program" whose purpose is to generate the availability of affordable rural housing. *Rural Rental Housing Loans (Section 515)*.[30]

"Section 515 loans can be used to build, acquire and rehabilitate, or improve dwellings in rural areas[; t]he term for loans is tied to the expected useful life of the property[.]" *HB 2-3560 MFH Asset*

[27]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[28]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[29]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[30]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page. For more information, see http://www.rurdev.usda.gov/HMF_MFH.html.

Management Handbook (February 2005, revised December 2008), p 1-5 (hereafter referred to as *HB 2-3560 Handbook*). "Some properties developed through th[e Rural Housing P]rogram received Section 8 rental assistance contracts to make the rental units more affordable to eligible families." *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (May 2003, revised with CHG-2, effective June 2007, and CHG-3, effective June 2009), p 1-7 (hereafter referred to as *Handbook 4350.3*). "New Section 515 properties are . . . no longer combined with Section 8 contracts." *Id*.

B. Grounds for Eviction/Termination of Lease

The following reasons for termination reflect the bases for eviction or termination under the Rural Housing Program, both *with and without* Section 8 assistance.[31]

A landlord may terminate the lease of a tenant in Rural Housing for any of the following reasons:

- Material noncompliance with the lease provisions or the rules of occupancy. 7 CFR 3560.159(a); *Handbook 4350.3*, p 8-11. See 7 CFR 3560.159(a)(1) and *Handbook 4350.3*, p 8-11, for examples of material noncompliance.

- Criminal activity by a covered person that threatens the other residents' health, safety, or right to peaceful enjoyment. 7 CFR 3560.159(d); 24 CFR 5.859(a)(1); 24 CFR 884.216(b).

  If the landlord has determined that a covered person engaged in criminal conduct, a tenant may be evicted for the covered person's criminal activity without regard to whether the covered person was arrested or convicted for the conduct and without having to meet a criminal standard of proof. 7 CFR 3560.159(d); 24 CFR 5.861; *Handbook 4350.3*, p 8-16.

- Criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of persons living in the immediate vicinity. 7 CFR 3560.159(d); 24 CFR 5.859(a)(2); 24 CFR 884.216(b).

- Drug-related criminal activity on or near the premises by a covered person. 7 CFR 3560.159(d); 24 CFR 5.858; 24 CFR 884.216(b).

[31]The 7 CFR 3560.159 citations apply to Section 515 Rural Housing *without* Section 8 assistance. Citations to 24 CFR 5.858, 24 CFR 5.859, 24 CFR 5.860, 24 CFR 5.861 apply to Section 515 Rural Housing *with and without* Section 8 assistance. See 7 CFR 3560.159(d); 24 CFR 884.216(b). *Handbook 4350.3* citations apply to Section 515 Rural Housing *with* Section 8 assistance.

- Illegal drug use or alcohol abuse by a household member, or a pattern of illegal drug use or alcohol abuse, that interferes with the other residents' health, safety, or right to peaceful enjoyment. 7 CFR 3560.159(d); 24 CFR 5.858 (drugs); 24 CFR 5.860 (alcohol); 24 CFR 884.216(b).

- Tenant's violation of a condition of probation or parole imposed under federal or state law. 7 CFR 3560.159(d); 24 CFR 5.859(b)(2); 24 CFR 884.216(b).

- Tenant's flight to avoid prosecution after commission or attempted commission of a felony or to avoid penalties after conviction of a felony or attempted felony. 7 CFR 3560.159(d); 24 CFR 5.859(b)(1); 24 CFR 884.216(b).

- Other good cause. 7 CFR 3560.159(a); *Handbook 4350.3*, Figure 8-2, p 8-11. See 7 CFR 3560.159(a)(2), Rural Housing *without* Section 8, for examples of good cause. No examples specifically applicable to Rural Housing *with* Section 8 assistance appear in *Handbook 4350.3*.

Where no law or regulation requires the landlord to terminate a tenant's lease under the circumstances, the landlord has discretion over whether to terminate the tenant's lease. 24 CFR 5.852(a). 24 CFR 5.852(a) contains a list of considerations for the landlord's decision-making process.

C. Notice of Termination

1. Content

a. Rural Housing With Section 8 Assistance

The notice of termination must:

- be in writing. *Handbook 4350.3*, p 8-14. The notice must be in an accessible format for a person with a disability. *Id.*

- state the specific date of termination. *Id.*

- provide enough detail about the violations for the tenant to formulate a defense. *Id.*

- advise the tenant that if he or she remains in the unit on the date scheduled for termination, the owner may start the judicial process of eviction, and that the tenant may defend against the eviction in court. *Id.*

- inform the tenant that he or she has ten days in which to discuss the termination with the landlord. *Id*.

- advise the tenant that persons with disabilities are entitled to request reasonable accommodations for the hearing process. *Id*.

In a judicial proceeding to terminate a tenant's lease, the landlord may not rely on reasons for termination that were not listed in the notice of termination. *Handbook 4350.3*, p 8-15. The landlord may, however, rely on grounds about which he or she was unaware at the time the notice was sent. *Id*.

A tenant may rely on state or local laws governing eviction when the state or local laws afford the tenant additional procedural rights, unless the federal law preempts other law. *Handbook 4350.3*, p 8-16.

b. Rural Housing Without Section 8 Assistance

The notice of termination must:

- be in writing. 7 CFR 3560.159(a).

- state the specific date of termination. 7 CFR 3560.159(b)(1).

- specifically reference the violations of the lease or occupancy rules that the landlord believes qualify as material noncompliance or as other good cause. 7 CFR 3560.159(b)(2).

- inform the tenant of the conditions under which the landlord may begin the judicial process of eviction. 7 CFR 3560.159(b)(3).

Before a tenant's lease is terminated, the landlord must "give the tenant an opportunity to correct the violation." 7 CFR 3560.159(a). Termination cannot occur unless the incidents leading to termination are documented and there is documentation that prior notice was given to the tenant describing the conduct that would result in termination. *Id*.

2. Manner of Service

No requirements for the manner of service are found in the applicable regulations; therefore, the manner of serving

termination notices to persons receiving Rural Housing *with and without* Section 8 assistance is governed by state and local laws. See *HB 2-3560 Handbook*, p 6-44; *Handbook 4350.3*, p 8-15.

3. Time

- Time requirements for a notice of termination are governed by the terms of the lease and by state law. See *HB 2-3560 Handbook*, p 6-44; *Handbook 4350.3*, p 8-14.

3.7 Low Income Housing Tax Credit (LIHTC) Program

A. In General

The Low Income Housing Tax Credit (LIHTC) Program was created by Congress to generate equity capital for the construction and rehabilitation of affordable rental housing. *HOME and Low Income Housing Tax Credits (LIHTC)*.[32] See 26 USC 42. In Michigan, the LIHTC Program is administered by the Michigan State Housing Development Authority (MSHDA). "[LIHTC in Michigan] is an investment vehicle . . . which is intended to increase and preserve affordable rental housing by replacing earlier tax incentives with a credit directly applicable against taxable income."[33]

B. Grounds for Eviction/Termination of Lease

Good cause is required to terminate a tenant's lease under the LIHTC. *Michigan State Housing Development Authority Compliance Manual, Low Income Housing Tax Credit Program* (April 2026), p 6-10 and 6-11. MSHDA has issued an approved and recommended Lease Addendum for leases involving LIHTC properties.[34] The Lease Addendum contains a list of grounds for termination substantially similar to those required to terminate leases of other subsidized housing properties. See also 26 USC 42(h)(6)(E)(*ii*)(I); IRS Rev. Ruling 2004-82; IRS Rev. Procedure 2005-37; IRC Section 42(h)(6)(E)(*ii*).

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[32]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[33]See http://www.michigan.gov/mshda/0,4641,7-141-5587_5601-21934--,00.html.

[34]See the Lease Addendum, pp 1-2, at https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/rental/Property-Managers/Compliance-for-Rental-Housing/Compliance-Forms/Leases/LIHTC-Lease-Addendum.pdf?rev=72cfaaa354104bbabac365622fe05c95&hash=8F57E7B4EB62D6B7CFDA27D143BED0B7#page=1.

C. Notice of Termination

Federal notice requirements may apply in addition to state law and the lease. LIHTC is a covered housing program under 34 USC 12491(a)(3)(J), and properties participating in a covered housing program are covered properties under 15 USC 9058(a)(2)(A)(*i*). The lessor of a covered dwelling unit "may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate . . . ." 15 USC 9058(c)(1). VAWA also requires the notice of rights and certification form to accompany any notification of eviction or termination of assistance. 34 USC 12491(d)(2)(C). See Section 3.8(E). MSHDA's approved and recommended Lease Addendum for leases involving LIHTC properties contains procedural requirements for terminating a tenant's lease of LIHTC property.[35]

3.8 Violence Against Women Act (VAWA) Protections[36]

VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking from discrimination in all HUD (United States Department of Housing and Urban Development) rental housing programs. VAWA states:

> An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. [34 USC 12491(b)(1).]

"The . . . agency [charged with the administration of] each covered housing program shall implement [34 USC 12491], as [it] applies to the covered housing program." 34 USC 12491(g). The list of covered housing programs appears in 34 USC 12491(a)(3)(A)-(P). It includes:

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[35] See the Lease Addendum, p 3, at https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/rental/Property-Managers/Compliance-for-Rental-Housing/Compliance-Forms/Leases/LIHTC-Lease-Addendum.pdf?rev=72cfaaa354104bbabac365622fe05c95&hash=8F57E7B4EB62D6B7CFDA27D143BED0B7#page=3.

[36] VAWA was reauthorized effective March 7, 2013. See S. 47-113th Congress: Violence Against Women Reauthorization Act of 2013 (2013), at http://www.govtrack.us/congress/bills/113/s47. As reauthorized, VAWA provides much broader protections in housing to applicants or tenants who are, or who have been, victims of domestic or dating violence, sexual assault, or stalking. See also https://www.govinfo.gov/content/pkg/FR-2013-08-06/pdf/2013-18920.pdf (beginning at the bottom of the second column). Effective December 16, 2016, the HUD adopted a final rule regarding HUD's implementation of the requirements of the 2013 reauthorization of VAWA, available at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf.

- Section 202 Housing Program for the elderly (see Section 3.4(D));
- Section 811 Housing Program for people with disabilities (see Section 3.4(D));
- Section 221 Housing Program (below market interest rate) (see Section 3.4(E));
- Section 236 Housing Program (interest reduction payments) (see Section 3.4(E));
- Public Housing (see Section 3.3);
- Section 8 Housing Programs (see Section 3.4—project-based, and Section 3.5—tenant-based);
- Section 515 Rural Housing Program (see Section 3.6); and
- Low Income Housing Tax Credit Program (see Section 3.7).[37]

The Department of Housing and Urban Development (HUD) is one of the agencies charged with implementing VAWA as it pertains to covered housing programs. The HUD's regulations regarding implementation of the VAWA in HUD housing programs is located in Title 24 of the Code of Federal Regulations, and can be accessed on the United States Government Publishing Office website.

A. An Incident of Violence Does Not Constitute a Serious or Repeated Lease Violation or Good Cause for Termination

34 USC 12491(b)(2) states:

> An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—
>
> > (A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or
> >
> > (B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

[37] The HOPWA housing program for people with HIV/AIDS is also a covered housing program.

B. Termination Based on Criminal Activity

A landlord may not deny a tenant "assistance, tenancy, or occupancy rights to housing assisted under a covered housing program" on the sole basis that a member of the tenant's household, or a person under the tenant's control, engages in criminal activity directly related to violence when the tenant, or a person affiliated with the tenant, is the victim or threatened victim of the violence. 34 USC 12491(b)(3)(A).

When the perpetrator and the victim are both lawful tenants under a covered housing program, a landlord may bifurcate the lease. 34 USC 12491(b)(3)(B)(*i*). A tenant or other lawful occupant of a residence may be evicted, removed, or have his or her assistance terminated under a covered housing program if that person engages in criminal activity related to violence against another lawful occupant. *Id*. The landlord can evict the perpetrator without penalizing the lawful occupant who is the victim of the criminal activity. *Id*.

If the tenant who is evicted, removed, or whose assistance is terminated is the only individual in the household who is eligible for tenancy in the covered housing program, the landlord must allow any remaining tenant the opportunity to qualify for assistance under the program. 34 USC 12491(b)(3)(B)(*ii*). If the remaining tenant is not eligible for assistance, the tenant must be given a reasonable amount of time to obtain new housing or to qualify for assistance under another program. *Id*.

C. Extent of Limitations on a Landlord's Authority

VAWA protections do not prevent the landlord from complying with a court order, including a civil protection order, that limits a tenant's access to property or that affects the distribution or possession of a household member's property. 34 USC 12491(b)(3)(C)(*i*)(I)-(II).

VAWA protections do not limit a landlord's authority to evict a tenant in a covered housing program for "any violation of a lease not premised on the act of violence in question" as long as the landlord does not hold the victim of actual or threatened violence to "a more demanding standard than other tenants in determining whether to evict or terminate[.]" 34 USC 12491(b)(3)(C)(*ii*).

VAWA protections do not prevent a landlord from evicting a tenant from a covered housing program if the landlord can show the presence of "an actual and imminent threat to other tenants or individuals employed at or providing service to the property . . . if the assistance is not terminated or the tenant is not evicted[.]" 34 USC 12491(b)(3)(C)(*iii*).

VAWA protections do not "supersede any provision of any Federal, State, or local law that provides greater protection than [VAWA] for victims of domestic violence, dating violence, sexual assault, or stalking." 34 USC 12491(b)(3)(C)(*iv*).

D. Documentation

A landlord *may* require written documentation from a tenant or applicant who claims he or she is entitled to VAWA protection. 34 USC 12491(c)(1). However, a landlord is not required to request documentation. 34 USC 12491(c)(5).

If a landlord requests documentation, the landlord must do so in writing. 34 USC 12491(c)(1). After receipt of the written request, the tenant or applicant has 14 business days to provide the documentation. 34 USC 12491(c)(2)(A). A landlord has discretion to extend the deadline. 34 USC 12491(c)(2)(B). If the tenant or applicant fails to provide the documentation by the deadline, the landlord may:

- "deny admission by the applicant or tenant to the covered program[.]" 34 USC 12491(c)(2)(A)(*i*).
- "deny assistance under the covered program to the applicant or tenant[.]" 34 USC 12491(c)(2)(A)(*ii*).
- "terminate the participation of the applicant or tenant in the covered program[.]" 34 USC 12491(c)(2)(A)(*iii*).
- "evict the applicant, the tenant, or a lawful occupant that commits violations of a lease." 34 USC 12491(c)(2)(A)(*iv*).

1. Form of Documentation

The form of documentation may be any of the following:

- an approved certification form that states all of the following:
  - The tenant or applicant is a victim of violence. 34 USC 12491(c)(3)(A)(*i*).
  - The incident of violence for which the tenant or applicant is seeking protection qualifies under 34 USC 12491(b).[38] 34 USC 12491(c)(3)(A)(*ii*).
  - The name of the perpetrator if known and if it is safe to include it. 34 USC 12491(c)(3)(A)(*iii*).

[38] Description of protection offered by VAWA and limitations of that protection.

- a document that meets all of the following requirements:
  - It is signed by the tenant or applicant, and a qualified person from whom the victim sought assistance related to the violence or effects of the violence. 34 USC 12491(c)(3)(B)(*i*)(I)-(II).
    - A person is qualified to provide documentation if he or she is "an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse[.]" 34 USC 12491(c)(3)(B)(*i*)(I).
  - It "states under penalty of perjury that the [qualified person who signed the document] believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under [VAWA] meets the requirements under [34 USC 12491(b)[39].]" 34 USC 12491(c)(3)(B)(ii).
- "a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency[.]" 34 USC 12491(c)(3)(C).
- a statement or other evidence if permitted by the landlord. 34 USC 12491(c)(3)(D).

2. Confidentiality of Documentation

Information disclosed in the documentation must be kept confidential and may not be disclosed to another entity or individual unless:

- the tenant or applicant, in writing, requests or consents to disclosure. 34 USC 12491(c)(4)(A).
- the information is required in an eviction proceeding. 34 USC 12491(c)(4)(B).
- the information is "otherwise required by applicable law." 34 USC 12491(c)(4)(C).

[39] Description of protection offered by VAWA and limitations of that protection.

A landlord's compliance with 34 USC 12491(b)[40] on the basis of the documentation "shall not . . . constitute evidence of an unreasonable act or omission[.]" 34 USC 12491(c)(6). However, 34 USC 12491(c)(6) does not limit a landlord's liability for failing to comply with the provisions of 34 USC 12491(b).

3. Conflict of Information in Documentation

If a tenant's or applicant's documentation contains conflicting information, the landlord may require the tenant or applicant to provide third-party documentation that satisfies the content requirements of 34 USC 12491(c)(3)(B)-(D). 34 USC 12491(c)(7).

4. Documentation Provisions Do Not Supersede Greater Protection Provided by Other Law

"Nothing in [34 USC 12491(c) (documentation)] shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than [34 USC 12491(c)] for victims of domestic violence, dating violence, sexual assault, or stalking." 34 USC 12491(c)(8).

5. Documentation Not Required

A landlord is not required "to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking." 34 USC 12491(c)(5).

E. Notification

HUD is responsible for developing "a notice of the rights of individuals under [34 USC 12491], including the right to confidentiality and the limits thereof." 34 USC 12491(d)(1).

Each landlord of a covered housing program must provide the notice of rights and a copy of the certification form described in 34 USC 12491(c)(3)(A) to tenants and applicants as indicated by all of the following:

- "[A]t the time [an] applicant is denied residency in a dwelling unit assisted under the covered housing program[.]" 34 USC 12491(d)(2)(A).

[40] Description of protection offered by VAWA and limitations to that protection.

- "[A]t the time [an] individual is admitted to a dwelling unit assisted under the covered housing program[.]" 34 USC 12491(d)(2)(B).
- "[W]ith any notification of eviction or notification of termination of assistance[.]" 34 USC 12491(d)(2)(C).
- "[I]n multiple languages, consistent with guidance issued by [HUD.]" 34 USC 12491(d)(2)(D).

F. Emergency Transfers

34 USC 12491(e) requires that an emergency transfer plan be established:

> Each appropriate agency shall adopt a model emergency transfer plan for use by [landlords] of housing assisted under covered housing programs that—
>
> (1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if—
>
> (A) the tenant expressly requests the transfer; and
>
> (B)(*i*) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or
>
> (*ii*) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and
>
> (2) incorporates reasonable confidentiality measures to ensure that the [landlord] does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

"[HUD] shall establish policies and procedures under which a victim requesting an emergency transfer . . . may receive, subject to the

availability of tenant protection vouchers, assistance under [the tenant-based Section 8 voucher program]."[41] 34 USC 12491(f).

[41]See Section 3.5 for information about the Section 8 Housing Choice Voucher Program.

3.9 Subsidized Housing Resources

- **Center for Budget and Policy Priorities**

http://www.cbpp.org

- **Center for Community Change**

http://www.communitychange.org

- **Directory of Subsidized Properties in Michigan**

https://www.affordablehousing.com/mi/

- **Fair Housing Agencies**

https://www.michigan.gov/mdcr/enforcement/fair-housing (Michigan Department of Civil Rights fair housing information)

- **HOME Program**

https://www.hud.gov/hud-partners/community-affordable-housing-programs#home-1 (federal)

https://www.michigan.gov/mshda/rental/property-managers/compliance/manuals/home-compliance-manual (Michigan)

- **Housing Assistance Council**

http://www.ruralhome.org

- **Housing Choice Voucher Program (Tenant-Based Section 8)**

https://www.hud.gov/topics/housing_choice_voucher_program_section_8

https://www.hud.gov/helping-americans/housing-choice-vouchers

- **HUD Data**

http://www.huduser.org

- ***HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (REV-1, Change 4, November 2013; later HUD guidance applies)**

https://www.hud.gov/sites/documents/43503hsgh.pdf

- ***HUD Housing Choice Voucher* Program Guidebook (current chapters; archived 2001 guide where not superseded)**

https://perma.cc/6DSP-SKS8[42]

Current guidebook: https://www.hud.gov/helping-americans/housing-choice-vouchers-guidebook

- **Low Income Housing Tax Credit (LIHTC)**

http://www.michigan.gov/mshda/0,4641,7-141-5587_5601-21934--,00.html (Michigan)

https://www.huduser.gov/portal/datasets/lihtc.html (LIHTC database)

- **Michigan HUD Information**

https://www.hud.gov/states/michigan

https://www.hud.gov/states/michigan#Affordable

- **Michigan Poverty Law Program**

http://www.mplp.org

- **Michigan State Housing Development Authority**

http://www.michigan.gov/mshda

- **MSHDA *Compliance Manual, Low Income Housing Tax Credit Program* (current manual; Chapter 4, April 2026)**

https://www.michigan.gov/mshda/rental/property-managers/compliance/manuals/lihtc-compliance-manual

- **Multifamily Housing**

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh

- **National Center on Poverty Law (Shriver Center)**

http://www.povertylaw.org

- **National Housing Law Project**

[42]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

http://www.nhlp.org

- **National Low Income Housing Coalition**

http://www.nlihc.org

- **New Construction and Substantial Rehabilitation Programs**

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/s8bkinfo

- **Project-Based Vouchers**

https://www.hud.gov/helping-americans/housing-choice-vouchers-project

- **Public Housing Program**

https://www.hud.gov/topics/rental_assistance/phprog

- ***Public Housing Occupancy Guidebook*** **(current chapters; archived June 2003 guide where applicable)**

https://perma.cc/6M7N-BWFH[43]

Current guidebook: https://www.hud.gov/hud-partners/public-housing-occupancy-guidebook

- **Rural Housing**

http://www.hudexchange.info/programs/rhed

- **Section 202 Supportive Housing for the Elderly**

https://www.hud.gov/hud-partners/multifamily-programs

- **Section 811 Supportive Housing for People with Disabilities**

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/disab811

- **Shelter Plus Care Program**

https://perma.cc/6V9R-B892[44]

[43]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

- **Supportive Housing Program**

https://perma.cc/F95G-B3QN[45]

- **The Urban Institute, *Federal Programs for Addressing Low-Income Housing Needs, A Policy Primer* (2008)**

https://www.urban.org/research/publication/federal-programs-addressing-low-income-housing-needs

- **USDA *MFH Asset Management Handbook, HB-2-3560* (archived edition: February 2005, revised December 2008)**

https://perma.cc/U2Z3-J92Y[46]

Current handbook: https://www.usda.gov/guidance-documents/rhs-handbook/rhs/hb-2-3560-mfh-asset-management-handbook

- **USDA Rural Development**

http://www.rurdev.usda.gov/HMF_MFH.html

[44]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[45]The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

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Chapter 4: Summary Proceedings To Evict[1]

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[1]Effective November 6, 2023, Administrative File No. 2020-08 made significant amendments to Administrative Order No. 2020-17, MCR 2.408, and MCR 4.201. "If good cause exists, a court may request from the State Court Administrative Office (SCAO) an extension to delay the effective date" of the order for that court. ADM File No. 2020-08.

4.1 Introduction[2]

"[The Summary Proceedings Act] allows for summary eviction proceedings to be brought in district court to recover possession of a rented or leased residence and to obtain ancillary relief." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 527 (2009). See MCL 600.5704. "'Summary proceedings' means a civil action to recover possession of premises and to obtain certain ancillary relief as provided by [MCL 600.5701 *et seq*.] and by court rules adopted in connection therewith." MCL 600.5701(a).

The statutes governing summary proceedings are found in Chapter 57 (the Summary Proceedings Act) of the Revised Judicature Act.[3] According to MCL 600.5708, "[e]xcept as otherwise provided in [MCL 600.5701 *et seq*.], the procedure in summary proceedings shall be regulated by rules adopted by the supreme court and by local court rules not inconsistent therewith." See also MCR 4.201(A): "Except as provided by this rule and MCL 600.5701 *et seq*., a summary proceeding to recover possession of premises from a person in possession as described in MCL 600.5714 is governed by the Michigan Court Rules."[4] MCR 4.201 governs summary proceedings in landlord-tenant cases, and MCR 4.202 governs summary proceedings involving land contracts.[5] See the Michigan Judicial Institute's flowchart of the summary proceedings process.

The scope of a court's authority over summary proceedings is set forth in MCL 600.5732:

> Pursuant to applicable court rules, a court having jurisdiction over summary proceedings may provide for pleadings and motions, issue process and subpoenas, compel the attendance and testimony of witnesses, enter and set aside defaults and default judgments, allow amendments to pleadings, process, motions and orders, order adjournments and continuances, make and enforce all other writs and orders and do all other things necessary to hear and determine summary proceedings.

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[2]For assistance in understanding and managing landlord-tenant matters see http://michiganlegalhelp.org/self-help-tools/housing.

[3]Summary proceedings to recover possession of property held by land contract are discussed in Section 7.2. Mobile home tenancies are specifically addressed in Chapter 57a of the Revised Judicature Act, MCL 600.5771–MCL 600.5785. See also Section 1.11(B).

[4]"Forms available for public distribution at the court clerk's office and SCAO-approved forms located online may be used in the proceeding." MCR 4.201(A). The forms are available at https://www.courts.michigan.gov/SCAO-forms/LTLC-forms/.

[5]See Section 7.2 for information on proceedings involving land contracts.

"The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory." MCL 600.5750. See also *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 168 (1999). MCL 600.5750 further states that "[a] judgment for possession under this chapter does not merge or bar any other claim for relief . . . .[6] The plaintiff obtaining a judgment for possession of any premises under this chapter is entitled to a civil action against the defendant for damages from the time of forcible entry or detainer, or trespass, or of the notice of forfeiture, notice to quit or demand for possession, as the case may be."

> **Note:** For purposes of this chapter, the terms *landlord* and *plaintiff* are interchangeable, as are the terms *tenant* and *defendant*.

4.2 Bases for the Initiation of Summary Proceedings

MCL 600.5714 authorizes the initiation of summary proceedings when a tenant holds over possession of premises after the time stated in a demand for possession issued pursuant to MCL 600.5714 or after the time stated in a notice to quit issued pursuant to MCL 554.134.[7] See generally, MCL 600.5714.

A demand for possession of premises is governed by MCL 600.5716 (form and content of a demand for possession) and MCL 600.5718 (service of a demand for possession).[8] The requirements contained in MCL 600.5716 and MCL 600.5718 cannot be waived in a residential lease. MCL 554.633(1)(j).

A notice to quit is the method by which three types of tenancies may be terminated, MCL 554.134(1)-(3),[9] and MCL 600.5714(1)(c)(*iii*) authorizes the initiation of summary proceedings when a tenant fails to comply with the time period stated in a notice to quit. There are no statutory guidelines for the content or service of a notice to quit. Additionally, MCL 554.134 does not contain a remedy for situations in which a tenant fails to comply with a notice to quit. The remedy for those situations is found in MCL 600.5714(1)(c)(*iii*), which authorizes the initiation of summary proceedings when a tenant fails to comply with the time period stated in a notice to quit under MCL 554.134.

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[6] **Note:** Although a summary proceedings action does not merge or bar other *claims* for relief, collateral estoppel may prevent relitigation of *factual issues* previously determined by the court.

[7] Tenants in governmentally subsidized housing are entitled to different and/or additional notice provisions. See Chapter 3.

[8] See Section 4.3(E).

[9] The remaining provision in MCL 554.134, MCL 554.134(4), authorizes the termination of a lease for specific controlled substance violations on the premises. MCL 554.134(4) is discussed below.

A. After Service of a Notice to Quit or a Demand for Possession

1. Tenancy at Will or by Sufferance

A tenancy at will or a tenancy by sufferance may be terminated by a one-month notice to quit. MCL 554.134(1). If rent is payable at intervals of less than three months, the time of notice is sufficient if it equals the interval between rent payments. *Id*. *Summary proceedings may be initiated if the tenant has failed to vacate the premises by the date specified in the notice to quit*. MCL 600.5714(1)(c)(*iii*).

2. Nonpayment of Rent

"If a tenant neglects or refuses to pay rent on a lease at will or otherwise, the landlord may terminate the tenancy by giving the tenant a written 7-day notice to quit." MCL 554.134(2). See also MCL 600.5714(1)(a) (seven-day demand for possession for failure to pay rent). Both MCL 554.134(2) (notice to quit) and MCL 600.5714(1)(a) (demand for possession) contain language applicable to situations involving a tenant's failure to pay rent. *Summary proceedings may be initiated if the tenant has failed to pay the rent due and has failed to vacate the premises by the end of the seven-day notice to quit or demand for possession*. MCL 600.5714(1)(a) (demand for possession for failure to pay rent); MCL 600.5714(1)(c)(*iii*) (notice to quit for failure to pay rent). For purposes of MCL 600.5714(1)(a), "rent due does not include any accelerated indebtedness because of a breach of the lease under which the premises are held." MCL 600.5714(1)(a).

MCL 600.5744(7) expressly permits a tenant to retain possession of the premises by paying the amount of rent due plus taxed costs within the time specified in a possession judgment based on a tenant's nonpayment of rent. See MCL 600.5741 (court must calculate amount of rent in arrears to be stated in judgment of possession).

3. Tenancy from Year to Year

A year-to-year tenancy may be terminated by either party at any time by giving the other party a one-year notice to quit. MCL 554.134(3). *Summary proceedings may be initiated if the tenant has not vacated the premises by the end of the one-year notice*. MCL 600.5714(1)(c)(*iii*).

4. Lease Provision Prohibiting Controlled Substance Offenses

A landlord may give a tenant a written 24-hour notice to quit following termination of a lease pursuant to a clause in the lease prohibiting a tenant, a member of a tenant's household, or other person under the tenant's control from manufacturing, delivering, possessing, or possessing with the intent to deliver a controlled substance classified in schedule 1, 2, or 3 on the leased premises. MCL 554.134(4). See also MCL 600.5714(1)(b) (demand for possession for controlled substance offenses), which contains substantially similar language. *Summary proceedings may be initiated if the tenant has not vacated the premises within 24 hours of receiving the notice to quit*. MCL 554.134(4) (notice to quit for controlled substance offenses); MCL 600.5714(1)(c)(*iii*) (summary proceedings for tenant's failure to comply with notice to quit for controlled substance offenses). See also MCL 600.5714(1)(b) (demand for possession for controlled substance offenses).[10] Summary proceedings may be initiated only if a formal police report alleging that the person has engaged in the unlawful conduct has been filed. MCL 554.134(4). See also MCL 600.5714(1)(b) (demand for possession for controlled substance offenses).

5. Continuing Health Hazard on, or Physical Injury to, the Premises

A landlord may make a written seven-day demand for possession of the premises when a tenant "willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises[.]" MCL 600.5714(1)(d). *Summary proceedings may be initiated if the tenant fails "to deliver up possession of the premises or to substantially restore or repair the premises" within seven days of receiving the demand for possession, as long as summary proceedings are initiated no later than 90 days after the landlord discovered or should have discovered the condition of the premises*. *Id.* (Emphasis added).

[10] A tenant of housing operated by a local unit of government "is not considered to be holding over under [MCL 600.5714(1)(b) or MCL 600.5714(1)(c)] unless the tenancy or agreement has been terminated for just cause, as provided by lawful rules of the local housing commission or by law." MCL 600.5714(2). Similarly, a tenant in a mobile home park "is not considered to be holding over under [MCL 600.5714(1)(b) or MCL 600.5714(1)(c)] unless the tenancy or lease agreement is terminated for just cause pursuant to chapter 57a." MCL 600.5714(3). See Section 1.11 for information on mobile home tenancies.

6. Causing or Threatening to Cause Physical Injury to an Individual

Under certain conditions, a landlord may serve a written seven-day notice to quit on a tenant "after the tenant, a member of the tenant's household, or a person under the tenant's control, on real property owned or operated by the tenant's landlord, has caused or threatened physical injury to an individual." MCL 600.5714(1)(e). *Summary proceedings may be initiated if the tenant fails to vacate the premises within seven days of receiving the notice to quit*. *Id*. Summary proceedings may be initiated "only if the police department with jurisdiction has been notified that the person, on real property owned or operated by the tenant's landlord, caused or threatened physical injury to an individual." *Id*. MCL 600.5714(1)(e) does not apply if the tenant or a member of the tenant's household is the person injured or threatened or if federal housing regulations would be violated by application of this section.[11] MCL 600.5714(1)(e)(*i*)-(*ii*).

B. No Notice to Quit or Demand for Possession Required Before Initiating Summary Proceedings

In some circumstances, it is not necessary for a landlord to serve a tenant with a notice to quit or a demand for possession before initiating summary proceedings to recover possession of the premises.[12]

Committee Tip:

*The fact that no formal notice to quit or demand for possession is required in the situations below does not mean that a landlord may take immediate possession of the premises. The landlord **must** initiate summary proceedings in order to recover possession, and the **court** must determine whether the landlord is lawfully entitled to possession of the premises under the circumstances.*

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[11] See Chapter 3 for more information on governmentally subsidized housing.

[12] **Note:** Although the statutory provisions applicable to these situations do not require that any formal notice to quit or demand for possession be given to the tenant before the initiation of summary proceedings, logic dictates that (except where the term of the lease has expired or where the tenant is aware his or her possession is unlawful) a tenant is somehow made aware of the landlord's expectation that the tenant will vacate the premises by a certain date after which the tenant will be considered as holding over.

1. After the Term of Demise

Summary proceedings may be initiated when a tenant holds over his or her possession of the premises "[a]fter the term for which the premises are demised to the person or to the person under whom he or she holds."[13] MCL 600.5714(1)(c)(*ii*) (emphasis added).

2. After Forcible Entry

Summary proceedings may be initiated "[w]hen a person takes possession of premises by means of a forcible entry, holds possession of premises by force after a peaceable entry, or comes into possession of premises by trespass without color of title or other possessory interest." MCL 600.5714(1)(f). "This remedy is in addition to the remedy of entry permitted under [MCL 600.5711(3)]." MCL 600.5714(1)(f).

3. After Sale of Premises by Mortgage or by Execution

Summary proceedings may be initiated "[w]hen a person continues in possession of premises sold by virtue of a mortgage or execution, after the time limited by law for redemption of the premises." MCL 600.5714(1)(g) (emphasis added).

4. After Sale Authorized by Probate Court or by Will

Summary proceedings may be initiated "[w]hen a person continues in possession of premises sold and conveyed by a personal representative under license from the probate court or under authority in the will." MCL 600.5714(1)(h) (emphasis added).

C. Notice Determined By Lease

Summary proceedings may be initiated when a tenant holds over his or her possession of the premises after the lease is terminated by "a power to terminate provided in the lease or implied by law." MCL 600.5714(1)(c)(*i*) (emphasis added). While there is no *statutory* requirement of notice, the notice requirement should be contained in the *lease* itself. A *power to terminate* included in a lease must clearly indicate what action or omission by the tenant permits the landlord to elect such a

[13] Depending on the circumstances, a tenant who holds over after the term of a lease has expired may become a tenant at will or a tenant by sufferance and would be entitled to at least a 30-day notice to quit before a landlord could initiate summary proceedings. MCL 554.134(1); MCL 600.5714(1)(c)(*iii*).

remedy, and the lease must specify the notice of termination to which the tenant is entitled. *Erickson v Bay City Glass Co*, 6 Mich App 260, 265 (1967).

D. Form, Content, and Service of Notice to Quit or Demand for Possession

1. Form and Content

With the exception of MCL 554.134(2), which requires a written notice to quit for nonpayment of rent, MCL 554.134 does not specify the form or content required of a notice to quit.

In contrast, MCL 600.5716 specifies the form and content of a demand for possession.[14] A demand for possession must:

- be in writing,
- be addressed to the tenant,
- contain the address or a brief description of the premises,
- clearly state the reasons for the demand,
- clearly state the time allowed for remedial action, and
- "be dated and signed by the person entitled to possession, his attorney or agent."

"When nonpayment of rent or other sums due under the lease is claimed, the amount due at the time of the demand shall be stated." MCL 600.5716.

2. Service

MCL 554.134 does not specify a required method of service for a notice to quit. However, the methods of service reflected on the applicable SCAO Form DC 100c, *Notice to Quit to Recover Possession of Property/Landlord-Tenant*, mirror several of the service methods expressly stated in MCL 600.5718(1) for service of a demand for possession under the Summary Proceedings Act. MCL 600.5718(1) requires that service of the demand for possession be accomplished by:

[14]Note: There is no practical difference between a *notice to quit* and a *demand for possession*. Consequently, the notice requirements for a *demand for possession* may be instructive when preparing a *notice to quit*. See SCAO Form DC 100c, *Notice to Quit to Recover Possession of Property, Landlord-Tenant*.

- personal delivery to the tenant, MCL 600.5718(1)(a),
- personal delivery on the premises to a member of the tenant's family or household or an employee, who is of suitable age and discretion, with instructions to deliver it to the tenant, MCL 600.5718(1)(b),
- first-class mail addressed to the tenant, MCL 600.5718(1)(c), or
- electronic service, "if [the tenant] has in writing specifically consented to electronic service of the demand and if the consent or confirmation of the consent has been sent by 1 party and affirmatively replied to, by electronic transmission, by the other party." MCL 600.5718(1)(d).

> **Note:** Different requirements apply to service of the summons and complaint initiating summary proceedings to recover possession of the premises. See Section 4.4(D).

"If the demand is mailed, the date of service . . . is the next regular day for delivery of mail after the day when it was mailed." MCL 600.5718(1)(c).

The use of electronic service under MCL 600.5718(1)(d) is subject to MCL 600.5718(2), which provides:

> The electronic service address used by a party in the process under [MCL 600.5718(1)(d)] shall be considered to remain that party's correct, functioning electronic service address, unless the process under [MCL 600.5718(1)(d)] is repeated using a different electronic service address for that party or unless that party notifies the other in writing that that party no longer has an electronic service address. A landlord shall not refuse to enter a lease because the prospective tenant declines to consent to electronic service under [MCL 600.5718].

4.3 Initiating Summary Proceedings

Unless Administrative Order No. 2020-17 provides otherwise, "a court must comply with MCR 4.201 with regard to summary proceedings." AO 2020-17.[15]

MCR 2.407, MCR 2.408, and MCR 4.201(F) address the use of videoconferencing technology in civil cases. For any hearing held under subchapter 4.200, "the court must allow the use of videoconferencing technology in accordance with MCR 2.407 and MCR 2.408. The use of videoconferencing technology is presumed when providing the advice of rights and information required under [MCR 4.201(K)(2)(a)]."[16] MCR 4.201(F). See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1, for additional information on the use of videoconferencing.

A. Real Party in Interest

The Summary Proceedings Act allows only "[a] person entitled to possession of premises [to] recover possession by summary proceedings[.]" MCL 600.5714(1). See also MCL 600.2041; MCR 2.201(B) (all actions must be brought by the real party in interest). The plaintiff must "show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized." MCR 4.201(B)(1)(e). In summary proceedings, the district court has equitable jurisdiction concurrent with the circuit court; therefore, if questions of ownership arise during summary proceedings, the district court is authorized to determine title to the property involved if such a determination is necessary to adjudicate the possession issue. MCL 600.8302(1); MCL 600.8302(3).

Committee Tip:

On occasion, a party appearing or named in a proceeding is not the real party in interest. Where there is any question about a party's propriety, the court should make any necessary inquiry to determine whether the real party in interest is indeed the named party and the party appearing in court. Where a party is not the proper party and the reason for the mistake is merely technical, the Committee suggests that the court adjourn the matter and allow an amendment of the complaint. Where the mistake is not merely technical (and perhaps even purposeful), the court may, in its discretion, dismiss the case or adjourn and allow an amendment of the complaint.

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[15] Amended on June 24, 2020, October 22, 2020, December 29, 2020, March 22, 2021, April 9, 2021, July 2, 2021, July 26, 2021, August 10, 2022, and September 7, 2023.

[16] See Section 4.5(B) for additional information on the advice of rights set forth in MCR 4.201(K)(2)(a).

B. Representation

In any summary proceeding to recover possession of premises, parties are entitled to representation. MCR 4.201(G)(2). The court must inform any party who appears without counsel of the right to retain an attorney and about legal aid assistance when it is available. *Id*. MCR 4.201(K)(2)(a)(i) specifically requires the court to verbally inform the defendant of the right to an attorney under MCR 4.201(G)(2) "at the initial date and time set for trial noticed by the summons[.]" See MCR 4.201(J) and Section 4.13 for information on consent judgments or orders entered in a case where either party is unrepresented.

Generally, a nonattorney may not engage in the unauthorized practice of law.[17] MCL 600.916. "[A] person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge." *Dressel v Ameribank*, 468 Mich 557, 566 (2003).

1. Individuals

In Michigan, a natural person has a constitutional right to represent himself or herself in court. Const 1963, art 1, § 13 states, "A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney." See also MCL 600.1430, which states in part, "Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person."

A party or witness with limited English proficiency is entitled to a court-appointed foreign language interpreter if the interpreter's "services are necessary for the person to meaningfully participate in the case or court proceeding." MCR 1.111(B)(1). In addition, "[t]he court may appoint a foreign language interpreter for a person other than a party or witness who has a substantial interest in the case or court proceeding." MCR 1.111(B)(2). A person financially able to pay for the services of a foreign language interpreter may be ordered to reimburse the court for the cost of the interpreter. MCR 1.111(F)(5).[18]

[17] See http://www.michbar.org/professional/pdfs/UPLfacts.pdf.

[18] See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1, for more information on foreign language interpreters.

2. Corporations

"While an individual may appear *in propria personam*, a corporation, because of the very fact of its being a corporation, can appear only by attorney[.]" *Detroit Bar Ass'n v Union Guardian Trust Co (Denying Rehearing)*, 282 Mich 707, 711 (1938). "A layman is not authorized to practice law merely because he is an employee of a corporate fiduciary." *Id*. The requirement that a corporation be represented by an attorney extends to the preparation and filing of all pleadings. *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 216, 222 (1937) ("It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions . . . .") (Quotation marks omitted). See also *Dressel v Ameribank*, 468 Mich 557, 564-565 (2003) (citing the rule set out in *Detroit Bar Ass'n* with approval).

Committee Tip:

Any legal entity must be represented by counsel. A trust is a legal entity. Just as a nonattorney employee or fiduciary of a corporation may not represent the corporation, a named trustee may not represent the trust if he or she is not an attorney.

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3. Student Attorneys

Subject to the requirements outlined in MCR 8.120, qualified law students and recent law school graduates are permitted to represent indigent individuals in every Michigan court except the Supreme Court. MCR 8.120(A); MCR 8.120(D)(1). To be eligible, law students must: (1) have completed and received a passing grade in at least one year of coursework at an accredited law school, and (2) "meet[] the academic and moral standards established by the dean of that school." MCR 8.120(C). "[A] 'recent law graduate' is a person who has graduated from law school within the last year." *Id*. A qualified law student or recent graduate may undertake all phases of representation, including advising a client, negotiating on behalf of a client, and appearing in court on a client's behalf. MCR 8.120(D)(1). "Except as otherwise provided in [MCR 8.120], the indigent person that will be assisted by [a] student

must consent in writing to the representation." MCR 8.120(D)(1).

The student's or recent graduate's appearance in court must be approved by the judge or a majority of the panel of judges before whom the student or graduate is to appear, and the proceedings in which a student or graduate appears may be suspended at any stage if the student's or graduate's representation "is professionally inadequate" and if "substantial justice requires suspension." MCR 8.120(D)(3)(a)-(b).

A member of the Michigan Bar must supervise the student's or graduate's work and, in particular, must examine and sign all pleadings filed by the student or graduate. MCR 8.120(D)(2). A supervising attorney is not required to be present when the student or graduate is giving advice, negotiating, or appearing in court on a client's behalf during summary proceedings. See MCR 8.120(D)(2)(a)-(b).

C. Jurisdiction

Equitable jurisdiction is appropriate when there is no adequate legal remedy. *Berger v Roe*, 179 Mich 184, 188 (1914).

MCL 600.5704 expressly grants the district court "jurisdiction over summary proceedings to recover possession of premises under [MCL 600.5701 *et seq.*]." In addition, MCL 600.8302 confers on the district court jurisdiction over equitable claims in summary proceedings:

> (1) In addition to the civil jurisdiction provided in [MCL 600.5704 (summary proceedings) and MCL 600.8301 (amount in controversy)], the district court has equitable jurisdiction and authority concurrent with that of the circuit court in the matters and to the extent provided by this section.
>
> * * *
>
> (3) In an action under [MCL 600.5701 *et seq.*], the district court may hear and determine an equitable claim relating to or arising under [MCL 600.3101 *et seq.* (foreclosures), MCL 600.3301 *et seq.* (partitioning property), or MCL 600.3801 *et seq.* (nuisance)] or involving a right, interest, obligation, or title in land. The court may issue and enforce a judgment or order necessary to effectuate the court's equitable jurisdiction

as provided in this subsection, including the establishment of escrow accounts and receiverships.

D. Venue

Venue for summary proceedings "in all courts having jurisdiction over summary proceedings" is governed by MCL 600.5706. MCL 600.5706(1). For districts of the first class, venue is proper in the county where all or part of the premises are located. MCL 600.5706(2)(a). In districts of the second or third class, venue is proper in the district where all or part of the premises are located. MCL 600.5706(2)(b). If a district court is not operative within a district, venue is proper in a municipal court having jurisdiction over a city or township in which all or part of the premises are located. MCL 600.5706(3).

MCL 600.5706 is not jurisdictional. MCL 600.5706(1). If summary proceedings are brought in an improper venue, the proceedings may continue there unless the defendant moves for a change of venue under the applicable court rule, MCR 2.221, before or at the time of filing an answer, or unless the court on its own motion orders a change in venue. MCL 600.5706(4); MCR 2.221(A).

The court must verbally inform the parties of the right to a proper venue under MCR 4.201(G)(3) at the initial date and time set for trial noticed by the summons. MCR 4.201(K)(2)(a)(ii). If the case is first filed in an improper venue and transferred to a proper venue, the plaintiff must pay an additional filing fee to the court to which the case is transferred. MCL 600.5706(4); MCR 2.223(B)(1). The plaintiff may also have to pay other court costs and expenses as ordered by the transferring court, including reasonable compensation and attorney fees to the defendant. MCR 2.223(B)(1); MCR 2.223(C)(1). See also MCL 600.5706(4). Any such fees and costs must be paid before the action may go forward in the new court. MCR 2.223(C)(1). If they are not paid within 28 days from the date of the order to change venue, the court to which the case was transferred must dismiss it. *Id*.

"On such grounds and conditions as may be provided by court rule," summary proceedings begun in a proper venue "may be changed to any other county, district, or court and the proceeding tried in that county, district, or court." MCL 600.5706(5). If the case is first filed in a proper venue and transferred to a different venue, "[t]he party that moved for change of venue must pay to the receiving court within 28 days of the date of the transfer order the applicable filing fee as ordered by the transferring court." MCR 2.222(E)(1). No action may be taken until payment is made. *Id*. If the

fee is not paid, the court to which the case was transferred must order the case transferred back to the transferring court. *Id.*

"The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court." MCR 2.222(D)(1); MCR 2.223(B)(1). The order must be entered on a SCAO-approved form. MCR 2.226(A). If the order "is not prepared as required under [MCR 2.226(A)], and the order lacks the information necessary for the receiving court to determine under which rule the transfer was ordered, the clerk of the receiving court shall refuse to accept the transfer and shall prepare a notice of refusal on a form approved by the [SCAO] and return the case to the transferring court for a proper order within seven business days of receipt of the transfer order." MCR 2.226(B). Upon receipt of a refusal to accept a transferred case under MCR 2.226(B), the transferring court must "prepare a proper order in accordance with [MCR 2.226(A)] and retransfer the case within seven business days." MCR 2.226(C). Unless fees have been waived in accordance with MCR 2.002, the court must order the moving party (in an action where venue was proper) or the plaintiff (in an action where venue was improper) to pay the applicable statutory filing fee to the receiving court. MCR 2.222(D)(1); MCR 2.223(B)(1). "Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

"The transferring court must serve the order [of transfer] on the parties and send a copy to the receiving court. The clerk of the transferring court must prepare the case records for transfer in accordance with the orders entered under [MCR 2.222(D)(1) or MCR 2.223(B)(1)] and the Michigan Trial Court Records Management Standards and send them to the receiving court by a secure method." MCR 2.222(D)(2); MCR 2.223(B)(2). "The receiving court must temporarily suspend payment of the filing fee and open a case pending payment of the filing fee as ordered by the transferring court. The receiving court must notify the party that moved for change of venue (where venue was proper) or the plaintiff (where venue was improper) of the new case number in the receiving court, the amount due, and the due date." MCR 2.222(D)(3); see also MCR 2.223(B)(3). Where a jury fee has already been paid, "the clerk of the transferring court must forward it to the clerk of the receiving court as soon as possible after the case records have been transferred." MCR 2.222(E)(2); MCR 2.223(C)(2).

"The court to which any transfer is made[, whether the case was first filed in a proper or improper venue,] has full jurisdiction of the proceeding as though the proceeding were originally commenced in that court." MCL 600.5706(5).

E. Payment of Money After Initiation of Summary Proceedings

"The payment or the acceptance of money by a party before trial does not necessarily prevent or delay the proceedings." MCR 4.201(K)(4). The court rule suggests that a tenant's payment of money or the landlord's acceptance of money has no automatic consequence, and that the court has discretion whether to halt or continue the proceedings. Caselaw indicates that a landlord's acceptance of rent for a term occurring *after* the date on the notice of termination may waive the landlord's initial claim for possession. Whether a landlord has waived the notice to terminate is a question of fact that depends on the circumstances under which the rent was received. *Aspen Enterprises, Ltd v Bray*, 148 Mich App 9, 14 (1985).

For a case decided under the 1969 version of MCR 4.201,[19] see *Park Forest of Blackman v Smith*, 112 Mich App 421 (1982). Under the rule of *Park Forest*, "the landlord waives the notice to terminate by accepting rental payments for a period of time subsequent to the date specified in the notice." *Id*. at 426. The Court further stated, "It is inconsistent for a landlord to assert a termination of the lease and then, after the time specified in the notice has passed, accept rent for a further period of time when the tenant has not received notice that summary proceedings have been commenced." *Id*.

See also *Aspen Enterprises*, 148 Mich App at 12-13, where the Court stated: "Acceptance of rent after efforts to gain possession have been commenced may result in a waiver[,]" but "[r]eceipt of rent checks after sending a notice to quit does not automatically constitute waiver." In *Aspen Enterprises*, the Court determined that summary disposition was improper because there existed a question of fact regarding the landlord's intent in retaining the tenant's rent checks. *Id*. at 14. According to the Court, the question was whether the landlord accepted the tenant's late rent payments and "whether [the tenant] might have been misled by [the landlord's] retention [without cashing] of the checks for more than a week." *Id*. The Court noted that "the landlord's retention of that payment [for future rent], without more, constitutes a waiver of the notice." *Id*.

[19]The previous version of the court rule was DCR 754.10(d), effective from January 1, 1969, until the current version of the court rules was adopted on March 1, 1985. It contained language identical to the language in MCR 4.201(K)(4).

4.4 Summons and Complaint

A. Complaint

The requirements of a complaint to begin summary proceedings are set out in MCR 4.201(B):

> (B) Complaint.
>
> (1) *In General*. The complaint must
>
> (a) comply with the general pleading requirements;
>
> (b) have attached to it a copy of any written instrument on which occupancy was or is based;[20]
>
> (c) have attached to it copies of any notice to quit and any demand for possession (the copies must show when and how they were served);
>
> (d) describe the premises or the defendant's holding if it is less than the entire premises; and
>
> (e) show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized.
>
> (2) *Jury Demand*. If the plaintiff wants a jury trial, the demand must be made on a form approved by the State Court Administrative Office and filed along with the complaint. The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and information under [MCR 4.201(K)(2)(a)], unless payment of fees is waived under MCR 2.002.[21]
>
> (3) *Specific Requirements*.

[20] **Committee Tip:** The words "on which occupancy was or is based" indicate that the rule includes both expired leases and current leases, as well as any other writings that have formed the basis for the defendant's tenancy. Even where a party alleges that the tenancy is based on an oral agreement, expired leases and rental applications, if available, may help explain the terms of the tenancy and the history of rent payments and information exchanged between the parties.

[21] The jury fee in district court is $50. MCL 600.8371(9). Typically a defendant must demand a jury trial in the first response. See MCR 4.201(G)(4).

(a) If rent or other money is due and unpaid, the complaint must show

(*i*) the rental period and rate;

(*ii*) the amount due and unpaid when the complaint was filed; and

(*iii*) the date or dates the payments became due.

(b) If the tenancy involves housing operated by or under the rules of a governmental unit, the complaint must contain specific reference to the rules or law establishing the basis for ending the tenancy.[22]

(c) If the tenancy is of residential premises, the complaint must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended, in reasonable repair during the term of the lease or license,[23] and in compliance with applicable state and local health and safety laws, except when the disrepair or violation has been caused by the tenant's willful or irresponsible conduct or lack of conduct, or the parties to the lease or license have modified those obligations, as provided for by statute. Plaintiff must explain any defects in this allegation, for example local government's failure to inspect despite a request to do so. The relevant SCAO form must provide space for this explanation. A court may not refuse a filing based on anything in [MCR 4.201(B)(3)(c)].

(d) If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises pursuant to MCL 600.5714(1)(d), the complaint must

(*i*) describe the nature and the seriousness or extent of the condition on which the complaint is based, and

[22] See Chapter 3 for information on governmentally subsidized housing.

[23] See Section 2.3 for information on the statutory covenants of habitability.

> (*ii*) state the period of time for which the property owner has been aware of the condition.[24]
>
> (e) If possession is sought for trespass pursuant to MCL 600.5714(1)(f), the complaint must describe, when known by the plaintiff, the conditions under which possession was unlawfully taken or is unlawfully held and allege that no lawful tenancy of the premises has existed between the parties since [the] defendant took possession.

B. Summons

"The court in which a summary proceeding is commenced shall issue a summons, which may be served on the defendant by any officer or person authorized to serve process of the court. The summons shall command the defendant to appear for trial[.]" MCL 600.5735(1).

MCR 4.201(C) sets forth special requirements for summonses in summary proceedings cases:

> (C) Summons.
>
> (1) The summons must comply with MCR 2.102, except that it must command the defendant to appear for trial in accord with MCL 600.5735(2) [general statutory return dates], unless by local court rule the provisions of MCL 600.5735(4) [return dates set by local court rule] have been made applicable. If a court adopts a local court rule under MCL 600.5735(4), both of the following apply:
>
> (a) Pursuant to [MCR 4.201(G)(1)(b)], the defendant must be allowed to appear and orally answer the complaint on the date and time indicated by the summons.
>
> (b) The court must abide by the remaining requirements of [MCR 4.201].

[24] The plaintiff must institute summary proceedings on this basis not more than 90 days after the plaintiff discovered or should have discovered the condition of the premises. MCL 600.5714(1)(d).

(2) The summons must state whether or not the action is brought in the county or district in which the premises or any part of the premises is situated.

(3) The summons must also include the following advice to the defendant:

(a) The defendant has the right to employ an attorney to assist in answering the complaint and in preparing defenses.

(b) If the defendant does not have an attorney but does have money to retain one, he or she might locate an attorney through the State Bar of Michigan or a local lawyer referral service.

(c) If the defendant does not have an attorney and cannot pay for legal help, he or she might qualify for assistance through a local legal aid office.

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in accordance with [MCR 4.201(G)(4)]. The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and information under [MCR 4.201(K)(2)(a)],[25] unless payment of fees is waived under MCR 2.002.

(e) The defendant has a right to have the case tried in the proper county, district, or court. The case will be transferred to the proper county, district, or court if the defendant moves the court for such transfer.

(f) Written information attached to the summons regarding the local availability of rental and other housing assistance, including all information set forth in [MCR 4.201(K)(2)(a)].

C. Appearance

The time within which a defendant must appear for trial after being served with a summons depends on whether the court has adopted

[25]The jury fee in district court is $50. MCL 600.8371(9).

by local court rule the time periods outlined in MCL 600.5735(4). MCL 600.5735(1). If the court has not adopted the time periods in MCL 600.5735(4), the time periods stated in MCL 600.5735(2) apply to a defendant's appearance for trial after receipt of a summons.[26] MCL 600.5735(1). See also MCR 4.201(C)(1).

Ordinarily, the day of service—the day from which the time is to be computed—is not included in the computation, but the last day of the time period is included:

> The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order. [MCR 1.108(1). See also MCL 8.6.]

1. General Statutory Return Dates

MCL 600.5735(2) states:

> A summons issued under [MCL 600.5735] shall command the defendant to appear for trial as follows:
>
> > (a) Within 30 days of the issuance date of the summons in proceedings under [MCL 600.5726 (land contracts)], in which event the summons shall be served not less than 10 days before the date set for trial.
> >
> > (b) Within 10 days of the issuance date of the summons in all other proceedings, in which event the summons shall be served not less than 3 days before the date set for trial.

The general statutory requirements for service require service "not less than 3 days [cases not involving land contracts] [or 10 days (cases involving land contracts)] before the *date* set for trial." (Emphasis added). MCL 600.5735(2). The statutory language clearly indicates that the date on which trial is to begin does not count in the computation. This conclusion was summarized in *Chaddock v Barry*, 93 Mich 542, 543 (1892):

[26] "[A]ll local court rules created pursuant to MCL 600.5735(4), that in their implementation require a written answer, are temporarily suspended." Administrative Order No. 2020-17.

> [I]n determining the time within which process or notice must be served, the language of the statute must be observed; and where an act is to be done a certain number of days before a *day* stated, then that day is excluded in the computation[.] [Emphasis added.]

See also *Ehinger v Graham*, 190 Mich 132, 139 (1916); *First Bank of Cadillac v Benson*, 81 Mich App 550, 554 (1978).

2. Return Dates Adopted By Local Court Rule

In courts following the alternative method of beginning summary proceedings (authorized by local court rule pursuant to MCL 600.5735(4)), the defendant must appear and answer as follows:

> (a) Within 10 days after service of the summons upon the defendant in proceedings under [MCL 600.5726 (land contracts)].
>
> (b) Within 5 days after service of the summons upon the defendant in all other proceedings. [MCL 600.5735(4).[27]]

Note that "all local court rules created pursuant to MCL 600.5735(4), that in their implementation require a written answer, are temporarily suspended." Administrative Order No. 2020-17.[28]

D. Manner of Service

"Service-of-process rules are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses." *Hill v Frawley*, 155 Mich App 611, 613 (1986). See also MCR 2.105(K)(1).

Service of the summons and complaint must be made on the defendant by two methods. First, mailing is a required component

[27] "A summons issued under [MCL 600.5735(4)] remains in effect until served or quashed or until the action is dismissed, but additional summons as needed for service may be issued at any time at the plaintiff's request." MCL 600.5735(5).

[28] Amended on June 24, 2020, October 22, 2020, December 29, 2020, March 22, 2021, April 9, 2021, July 2, 2021, July 26, 2021, August 10, 2022, and September 7, 2023. Unless AO 2020-17 provides otherwise, "a court must comply with MCR 4.201 with regard to summary proceedings." AO 2020-17.

of service in all summary proceedings; mailing is not an alternative to physical delivery of the summons and complaint. MCR 4.201(D). A second method of service is also required in summary proceedings. This second service may be made in one of three ways: by a method of service described in MCR 2.105, by delivery to a member of the defendant's household, or by tacked service. MCR 4.201(D)(1)-(3). In its entirety, MCR 4.201(D) states:

> **(D) Service of Process.** A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. A plaintiff may also request the court mail a second copy of the summons and complaint and all attachments to the defendant in a court envelope – the same envelope as used for other court business which is clearly identified as coming from the court. This court mailing must be delivered to the US Post Office at least 7 days before the date of trial, and a record must be kept. The court may charge an additional fee as determined and published by the State Court Administrative Office. In addition to mailing, the defendant must be served in one of the following ways:
>
> (1) By a method provided in MCR 2.105;[29]
>
> (2) By delivering the documents at the premises to a member of the defendant's household who is
>
> (a) of suitable age,
>
> (b) informed of the contents, and
>
> (c) asked to deliver the documents to the defendant; or
>
> (3) After diligent attempts at personal service have been made, by securely attaching the documents to the main entrance of the tenant's dwelling unit. A return of service made under this subrule must list the attempts at personal service. Service under this subrule is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under this

[29] Service on an individual under MCR 2.105 may be made by personal delivery or "by registered or certified mail, return receipt requested, and delivery restricted to the addressee." MCR 2.105(A)(1)-(2).

subrule is entitled to the regular personal service fee.

See *Greene v Lindsey*, 456 US 444 (1982), for a discussion of tacking and due process. In *Greene*, 456 US at 453, the United States Supreme Court held that depending on the circumstances, "merely posting notice on an apartment door [may] not satisfy minimum standards of due process."

The court may, *in advance*, permit the plaintiff to make service in a way not otherwise provided under MCR 2.105.[30] MCR 2.105(J). According to MCR 2.105(J)(1), "[o]n a showing that service of process cannot reasonably be made as provided by [MCR 2.105], the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." MCR 2.105(J)(3) prohibits a party from effecting a means of service not otherwise authorized by rule "before entry of the court's order permitting it."

"An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." MCR 2.105(K)(3). "As long as the means are 'reasonably calculated' to reach the defendant, the requirement of actual notice is satisfied and service will be sustained." *Krueger v Williams*, 410 Mich 144, 159 (1981). Dismissal is appropriate, however, when there is "a complete failure of service of process." *Holliday v Townley*, 189 Mich App 424, 425-426 (1991).

Service for Money Claims. Disposition of a claim for a money judgment requires that the defendant be served as permitted by MCR 2.105 unless the defendant appears and answers the complaint. MCR 4.201(H)(1)(b). Substituted service or tacking is not sufficient to pursue a claim for money. See *id*.

If service of process under MCR 2.105 is not made on the defendant for a money claim, the money claim must be dismissed without prejudice or adjourned until service is complete, unless the defendant appears or files an answer to the complaint. MCR 4.201(H)(1)(b)(*i*).

[30]The specific process by which a plaintiff may obtain authorization for an alternative method of serving the defendant is found in MCR 2.105(J)(2).

E. Fees and Costs

The filing fee for a complaint for the possession of premises is $45. MCL 600.5756(1). When a claim for a money judgment is joined with a complaint for possession, the plaintiff must pay a supplemental fee equal to the regular filing fee for a money judgment in the same court. MCL 600.5756(2). See MCL 600.8371 for filing fee amounts applicable in district court. Beginning March 1, 2016, the plaintiff must also pay an electronic filing system fee of $10 for civil actions filed in the district court, including actions filed for summary proceedings. MCL 600.1986(1)(b). However, the fee may be more or less depending on the type of claim. An electronic filing system fee of $20 is required for civil actions filed in district court if a claim for money damages is joined with a claim for relief other than money damages; a similar fee of $5 is required for civil actions filed in the small claims division of district court. MCL 600.1986(1)(c); MCL 600.1986(1)(d).[31] Generally, the electronic filing system fee authorized under MCL 600.1986 is the only fee that may be charged to or collected in a civil action specifically for electronic filing. MCL 600.1987(1).[32] "Any electronic filing system fee paid by a party is a recoverable taxable cost." MCL 600.1990. If the plaintiff wants a jury trial, he or she must make a jury demand on a form approved by the State Court Administrative Office at the time of filing the complaint and must pay a jury fee of $50.[33] MCL 600.8371(9); MCR 4.201(B)(2).

All fees[34] must be waived for an individual that "shows that he or she is receiving any form of means-tested public assistance[.]"[35]

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[31] "An electronic filing system fee collected shall be remitted by the clerk to the state treasurer for deposit into the judicial electronic filing fund created under [MCL 600.176] and shall be used to establish an electronic filing system and supporting technology[.]" MCL 600.1989. Courts may apply to the Supreme Court for access to and use of the electronic filing system. MCL 600.1991(1). A person is not required to file a document electronically, and courts or their funding units "shall not require or permit a person to file a document electronically except as directed by the [S]upreme [C]ourt." MCL 600.1992. "A clerk shall not collect an electronic filing system fee under [MCL 600.1986(1)] after February 28, 2031." MCL 600.1993. For a detailed discussion of the legislation related to electronic filing systems (2015 PA 230-234), see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 3.

[32] The automated payment service fee collected under MCL 600.1986(5) may still be charged as well as charges permitted under MCL 600.1987(2) pursuant to a Supreme Court order.

[33] "[A] jury demand made in response to a complaint for summary proceedings in district court does not operate as a jury demand with regard to collateral claims that are removed to the circuit court because the claims exceed the district court's jurisdictional limits." *Adamski v Cole*, 197 Mich App 124, 130 (1992). In such a case, the party wishing a jury in circuit court must make the request in circuit court. See *id.*; MCR 2.508(B)(3)(b) (requiring party seeking jury trial to file a written demand for a jury trial and pay the applicable jury fee "within 28 days after the filing fee is paid in the receiving court, but no later than 56 days after the date of the removal or transfer order").

[34] For purposes of MCR 2.002 and except as otherwise provided in MCR 2.002(I) (payment of fees and costs related to service of process), "'fees' applies only to fees required by MCL 600.857, MCL 600.878, MCL 600.880[–]MCL 600.880c, MCL 600.1027, MCL 600.1986, MCL 600.2529, MCL 600.5756, MCL 600.8371, MCL 600.8420, MCL 700.2517, MCL 700.5104, and MCL 722.717." MCR 2.002(A)(2).

MCR 2.002(C). See also MCL 600.8371(6). However, fee waivers are not available to public or private organizations under MCR 2.002 "unless an applicable statute provides that no fee(s) shall be required." MCR 2.002(A)(1).

All fees must also be waived for an individual that "shows that he or she is unable because of indigence to pay fees[.]" MCR 2.002(F). Additionally, fees must be waived "[i]f a party is represented by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or by a law school clinic that provides services on the basis of indigence[.]" MCR 2.002(D). The court, on its own initiative, may order waived fees to be paid "when, upon a finding of fact, the court determines the reason for the waiver no longer exists." MCR 2.002(J).

"Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1, for more information on waiver of fees under MCR 2.002.

4.5 Answer and First Hearing

A. Appearance and Answer

MCR 4.201(G)(1) specifically describes the defendant's appearance and answer requirements. The defendant or his or her attorney "must appear and answer the complaint by the date on the summons." MCR 4.201(G)(1). The defendant may file a written answer, a motion under MCR 2.115 (motion for a more definite statement or a motion to strike), or a motion under MCR 2.116 (motion for summary disposition) and serve it on the plaintiff before the hearing.[36] MCR 4.201(G)(1)(a). If a defendant files a motion for summary disposition or for a more definite statement before filing an answer to the complaint, and the motion is denied, the defendant must afterward file an answer. MCR 2.108(C)(1). "If proof of the service is not filed before the hearing, the defendant or

[35] "[M]eans-tested public assistance includes but is not limited to: (1) Food Assistance Program through the State of Michigan; (2) Medicaid; (3) Family Independence Program through the State of Michigan; (4) Women, Infants, and Children benefits; (5) Supplemental Security Income through the federal government; or (6) Any other federal, state, or locally administered means-tested income or benefit." MCR 2.002(C).

[36] MCR 4.201(G)(1) contains no express analogue to MCR 4.201(B)(1)'s requirement that the complaint conform to the general pleading requirements. However, except where otherwise provided, the Michigan Court Rules apply to summary proceedings. MCR 4.201(A). Therefore, the rules of pleading in MCR 2.111 apply to responsive pleadings in summary proceedings.

the defendant's attorney may attest to service on the record." MCR 4.201(G)(1)(a).

All local court rules created pursuant to MCL 600.5735(4), that in their implementation require a written answer, are temporarily suspended until further order of the Michigan Supreme Court. Administrative Order No. 2020-17.[37]

A defendant may also satisfy the appearance and answer requirements by appearing at the hearing, or having an attorney appear on his or her behalf, and orally answering each allegation in the plaintiff's complaint on the record. MCR 4.201(G)(1)(b). If a party appears without an attorney, the court must inform them of the right to retain an attorney and about legal aid assistance if it is available. MCR 4.201(G)(2).

"If the plaintiff has indicated on the summons that the premises or any part of the premises is situated in a different county or district, the court must inform the defendant . . . of the right to motion the court to transfer the case to the county or district where the premises or any part of the premises is situated and that such a motion will be granted." MCR 4.201(G)(3). "The court may order change of venue on its own motion." MCR 4.201(G)(3)(a). "A motion to change venue pursuant to [MCR 4.201(G)] and MCL 600.5706(4) may be made in writing before the date listed on the summons, pursuant to [MCR 4.201(C)(1)], or orally in response to the court's advisement[.]" MCR 4.201(G)(3)(b). Transfer of the case is governed by MCR 2.223. MCR 4.201(G)(3)(c). See Section 4.3(D) for more information on change of venue.

A defendant who wants a jury trial must demand it orally at the first appearance or in writing within five days of being advised of the rights and information listed in MCR 4.201(K)(2)(a).[38] MCR 4.201(G)(4). The $50 jury trial fee must be paid when making the jury demand or within 5 days of being advised of the rights and information listed in MCR 4.201(K)(2)(a), unless payment of fees is waived under MCR 2.002. MCR 4.201(G)(4); MCL 600.8371(9). However, this right may be deemed waived (only on the issue of

[37] Amended on June 24, 2020, October 22, 2020, December 29, 2020, March 22, 2021, April 9, 2021, July 2, 2021, July 26, 2021, August 10, 2022, and September 7, 2023. Unless AO 2020-17 provides otherwise, "a court must comply with MCR 4.201 with regard to summary proceedings." AO 2020-17.

[38] "[A] jury demand made in response to a complaint for summary proceedings in district court does not operate as a jury demand with regard to collateral claims that are removed to the circuit court because the claims exceed the district court's jurisdictional limits." *Adamski v Cole*, 197 Mich App 124, 130 (1992). In such a case, the party wishing a jury in circuit court must make the request in circuit court. *Id.*; MCR 2.508(B)(3)(b) (requiring party seeking jury trial to file a written demand for a jury trial and pay the applicable jury fee "within 28 days after the filing fee is paid in the receiving court, but no later than 56 days after the date of the removal or transfer order").

possession) if an escrow order is entered pursuant to MCR 4.201(I)(2), and the defendant fails to comply with the order.[39] MCR 4.201(I)(2)(a)(iii).

See Section 4.10(B) for additional information on scheduling and pretrial motions following appearance and answer.

B. Advice of Rights and Information[40]

At the initial date and time set for trial noticed by the summons, the court must verbally inform the parties of the following rights and information unless otherwise provided in MCR 4.201(K)(2):

- The right to an attorney under MCR 4.201(G)(2). MCR 4.201(K)(2)(a)(i).
- The right to proper venue under MCR 4.201(G)(3). MCR 4.201(K)(2)(a)(ii).
- The right to demand a jury trial under MCR 4.201(G)(4). MCR 4.201(K)(2)(a)(iii).
- In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, the Michigan Department of Health and Human Services, local Coordinated Entry Agency, Housing Assessment and Resource Agency, or federal Help for Homeless Veterans program may be able to assist with payment of some or all of the rent due. Within five days of receiving the advice of rights and information under MCR 4.201(K)(2), the defendant must provide written proof to the court that an application for assistance has been submitted for processing under MCR 4.201(I)(3). MCR 4.201(K)(2)(a)(iv).
- In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, defendants do not need a judgment to receive assistance from the Michigan Department of Health and Human Services, local Coordinated Entry Agency, or Housing Assessment and Resource Agency. The summons and complaint from the court case are sufficient for help from the state. MCR 4.201(K)(2)(a)(v).
- The availability of the Michigan and local community dispute resolution program office as a possible source of case resolution. MCR 4.201(K)(2)(a)(vi).

[39] See Section 4.9(B) for more information on escrow orders.

[40] See SCAO Form DC 538, Advice of Rights and Information (Landlord-Tenant).

- The possibility of a conditional dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such conditional dismissal or direct the parties to the location of the SCAO approved form online. MCR 4.201(K)(2)(a)(vii).

"The use of videoconferencing technology is presumed when providing the advice of rights and information required under [MCR 4.201(K)(2)(a)]." MCR 4.201(F).

A district court magistrate may advise the defendant of the rights and information in MCR 4.201(K)(2)(a) if authorized by statutory amendment. MCR 4.201(K)(2)(c).

"Courts may provide advice of rights consistent with SCAO guidance to an individual or group of defendants via video, computer presentation, or other technological means so long as the court ensures that each defendant is present for the entire presentation. If a defendant was previously provided advice of rights by the court, whether via a group presentation or individually, the court is not required to again provide a full advice of rights but must, on the record, ensure that the defendant received a full advice of rights, understood the advice of rights, and ask if defendant has any questions about the advice of rights." MCR 4.201(K)(2)(b).

"If the defendant does not appear for trial on the date and time noticed by the summons and a default was not entered, the court must verbally inform the parties of the information in [MCR 4.201(K)(2)] at the defendant's first appearance and allow the defendant time to make a jury demand under [MCR 4.201(G)(4)] and to retain an attorney under [MCR 4.201(G)(2)]." MCR 4.201(K)(2)(a).

C. Adjournment of Trial

Unless otherwise provided in MCR 4.201, the court must adjourn the trial as provided in MCR 4.201(K)(1) after verbally advising the parties of the rights and information at the date and time set for trial under MCR 4.201(K)(2)(a). MCR 4.201(K)(2)(d). "In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, the court must stay further proceedings after advising the defendant of the rights and information listed in [MCR 4.201(K)(2)(a)] and adjourning the trial under [MCR 4.201(K)]." MCR 4.201(I)(3)(a). See Section 4.9(C) for more information on this mandatory stay.

If the court adjourns the trial after advising the defendant of the rights and information set forth in MCR 4.201(K)(2)(a), "it must be

scheduled at least 7 days but not more than 14 days after the initial date and time set for trial noticed by the summons, unless a jury demand is made under [MCR 4.201(G)(4)] or good cause is shown under [MCR 4.201(K)(1)(c)]." MCR 4.201(K)(1)(a). If good cause is shown, the court may adjourn the trial up to 56 days. MCR 4.201(K)(1)(c). "If the court adjourns trial for more than 14 days, an escrow order may be entered pursuant to [MCR 4.201(I)(2)]."[41] MCR 4.201(K)(1)(c). Additionally, the "parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court." *Id*.

D. Resolution of Case without Adjournment of Trial

After advising the defendant of the rights and information listed in MCR 4.201(K)(2)(a), "the court must decide remaining pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment." MCR 4.201(K)(1)(b). The court may only resolve the case immediately following the advice of rights and information required by MCR 4.201(K)(2)(a) without adjourning the trial in limited circumstances. MCR 4.201(K)(2)(e).[42]

E. Failure to Appear: Default Entered

If the defendant fails to appear on the date and time noticed by the summons, the plaintiff may motion the court for entry of a default, and the court may hear the plaintiff's proofs in support of judgment if:

- personal service of process was made on the residential defendant under MCR 2.105, or service of process was made on the residential defendant under MCR 4.201(D) and the court mailed a second copy of the initial summons and complaint in a court envelope and a record was kept pursuant to MCR 4.201(D), or service of process was made on the commercial defendant under MCR 4.201(D); or

- the plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e), or (f) sufficient to meet statutory and court rule requirements; or

- the defendant also fails to appear on the date and time in which the trial was adjourned under MCR 4.201(K)(1); or

[41] See Section 4.9(B) for additional information on escrow orders.

[42] See Section 4.10(A) for more information on trials and the limited circumstances under which a proceeding can be resolved without adjournment of trial.

- the defendant appears on the date and time noticed by the summons but fails to appear on the date and time in which the trial was adjourned under MCR 4.201(K)(1).[43] MCR 4.201(G)(5)(a).

If the court is satisfied that the complaint has met pleading and proof requirements and a default should be entered under MCR 4.201(G)(5)(a), it must enter a default judgment pursuant to MCL 600.5741 and MCR 4.201(L). MCR 4.201(G)(5)(b). "If the plaintiff fails to appear, a default judgment as to costs under MCL 600.5747 may be entered." MCR 4.201(G)(5)(c). See Section 4.12 for additional information on entry of default.

F. Failure to Appear: Default Not Entered

"If a default is not entered and the case is not otherwise resolved, the court must adjourn the trial for at least 7 days but not more than 14 days, unless a jury demand is made under [MCR 4.201(G)(4)] or good cause is shown under [MCR 4.201(K)(1)(c)]." MCR 4.201(G)(5)(d). "If the trial is adjourned, the court must mail notice of the new date to the party who failed to appear." *Id*.

"If the defendant does not appear for trial on the date and time noticed by the summons and a default was not entered, the court must verbally inform the parties of the information in [MCR 4.201(K)(2)] at the defendant's first appearance and allow the defendant time to make a jury demand under [MCR 4.201(G)(4)] and to retain an attorney under [MCR 4.201(G)(2)]." MCR 4.201(K)(2)(a).

G. Recording Summary Proceedings

"All landlord-tenant summary proceedings conducted in open court, including advice of rights and information required under [MCR 4.201(K)(2)(a)], must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108(G) may file a transcript of the record in a Michigan court." MCR 4.201(E).[44] However, MCR 4.201(E) "does not apply to courts providing the advice of rights in accordance with [MCR 4.201(K)(2)(b)]." MCR 4.201(E).

[43] See Section 4.12 for a discussion of defaults and default judgments.

[44] See MCR 8.108 in its entirety for detailed information regarding the duties of court recorders and reporters.

H. Fees and Costs

All fees[45] must be waived for an individual that "is receiving any form of means-tested public assistance[.]"[46] MCR 2.002(C). All fees must also be waived if an individual "shows that he or she is unable because of indigence to pay fees[.]" MCR 2.002(F). However, fee waivers are not available to public or private organizations under MCR 2.002 "unless an applicable statute provides that no fee(s) shall be required." MCR 2.002(A)(1).

"If the payment of fees has been waived under [MCR 2.002], the court may on its own initiative order the individual for whom the fees were waived to pay those fees when, upon a finding of fact, the court determines the reason for the waiver no longer exists." MCR 2.002(J).

"Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1, for more information on waiver of fees under MCR 2.002.

4.6 Claims and Counterclaims

A. Joinder

1. Money Claims and Counterclaims

Generally, money claims and counterclaims are freely joinable in summary proceedings. See MCL 600.5739(1); MCR 4.201(H)(1)(a). MCL 600.5739(1) states in part:

> Except as provided by court rules, a party to summary proceedings may join claims and counterclaims for money judgment for damages attributable to wrongful entry, detainer, or possession, for breach of the lease or contract

[45]For purposes of MCR 2.002 and except as otherwise provided in MCR 2.002(I) (payment of fees and costs related to service of process), "'fees' applies only to fees required by MCL 600.857, MCL 600.878, MCL 600.880[–] MCL 600.880c, MCL 600.1027, MCL 600.1986, MCL 600.2529, MCL 600.5756, MCL 600.8371, MCL 600.8420, MCL 700.2517, MCL 700.5104, and MCL 722.717." MCR 2.002(A)(2).

[46]"[M]eans-tested public assistance includes but is not limited to: (1) Food Assistance Program through the State of Michigan; (2) Medicaid; (3) Family Independence Program through the State of Michigan; (4) Women, Infants, and Children benefits; (5) Supplemental Security Income through the federal government; or (6) Any other federal, state, or locally administered means-tested income or benefit." MCR 2.002(C).

> under which the premises were held, or for waste or malicious destruction to the premises.

"A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer." MCR 4.201(H)(1)(a)(*i*).

The amount of money sought by a claim or counterclaim "shall not exceed the amount in controversy that otherwise limits the jurisdiction of the court."[47] MCL 600.5739(1).

Landlords must pay a supplemental filing fee to bring a money action. MCL 600.5756(2).[48] Fees must be waived for indigent individuals. MCR 2.002; MCR 2.002(A)(1) (fee waiver not applicable to public or private organizations "unless an applicable statute provides that no fee(s) shall be required").

"Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

For more information on the waiver of fees, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1. If service is not completed as required by MCR 2.105 and the defendant fails to appear or to file an answer, "a money claim must be dismissed without prejudice, or adjourned until service of process is complete[.]" MCR 4.201(H)(1)(b)(*i*)-(*ii*).

2. Equitable Claims and Counterclaims

A claim or counterclaim for equitable relief may be joined with the complaint or the answer. MCR 4.201(H)(1)(a)(*ii*).

B. Separation of Claims for Possession From Money Claims or Counterclaims

In general, all claims and counterclaims are tried together, but joinder is not mandatory. See MCR 4.201(H)(1)(a)(*i*); *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 527 (2009). A money counterclaim *must* be tried with a possession claim "[i]f adjudication of [the] money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, . . . unless it appears to the court that the counterclaim is without merit." MCR 4.201(H)(1)(e).

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[47]The amount in controversy in district court must not exceed $25,000. MCL 600.8301(1).

[48]The filing fee is the same as for other money claims in the same court. MCL 600.5756(2). See MCL 600.8371.

MCR 4.201(H)(1)(c)-(d) provide for the separation of possession claims from money claims or counterclaims in certain specified circumstances—pursuant to local court rule, where trying both at the same time would result in a substantial delay in trying the claim for possession, or where the possession claim must be resolved before determining damages. Separation of claims or counterclaims from disposition of the claim for possession does not prejudice those claims or counterclaims. MCL 600.5739(1).

According to MCR 4.201(H)(1):

> (c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to [MCR 4.201(H)(1)(e)].
>
> (d) If trial of a money claim or counterclaim
>
> > (*i*) might substantially delay trial of the possession claim, or
> >
> > (*ii*) requires that the premises be returned before damages can be determined,
> >
> > the court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing an order of eviction. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.

C. Costs of Repair, Cleaning, or Maintenance

If a money judgment based on the cost of repairs is awarded to a landlord for the tenant's physical damage to the property, the amount of money awarded must include the cost of the landlord's labor in making the repairs just as any order for the cost of repairs would include the cost of a third party's labor. MCL 600.5739(2). A landlord must be compensated for his or her labor "at a rate the court determines to be reasonable based on usual and customary charges for the repairs." *Id*.

Similarly, where the court finds that the landlord breached the lease because of his or her failure to repair the property and the court grants a money judgment to the tenant "for or based on the cost of repairs," the amount of money awarded must include the cost of the tenant's labor just as it would if repairs were made by a third party.

MCL 600.5739(3). "A tenant's labor . . . shall be compensated at a rate the court determines to be reasonable based on usual and customary charges for the repairs." *Id*.

Committee Tip:

A fixed dollar amount set by the lease for a landlord's performance of some repair or service is a liquidated damage. Unless there is a reasonable relationship between the fixed charge and the actual cost a landlord incurs for performing the repair or service, the liquidated damage provision constitutes an illegal penalty charge and is unenforceable.

Any damages awarded to a landlord should reflect ordinary depreciation and wear and tear. For example, it is not appropriate to award a landlord the full cost of carpeting damaged by a tenant; that cost must be discounted to reflect the carpet's age and its condition when the tenant moved in.

D. Removal

1. Money Claims and Counterclaims

The amount of money sought by a claim or counterclaim "shall not exceed the amount in controversy that otherwise limits the jurisdiction of the court."[49] MCL 600.5739(1). On the court's own motion or on the motion of either party, all money claims and counterclaims exceeding the district court's jurisdiction must be removed to circuit court, in accordance with MCR 4.002, "if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit." MCR 4.201(H)(2)(b). See also *Adamski v Cole*, 197 Mich App 124, 129 (1992).

If the money claim or counterclaim is removed, a jury demand must be timely reasserted in the circuit court. The Court of Appeals has determined that when an action is not *entirely* removed from district court "a jury demand made in response to a complaint for summary proceedings in district court does

[49]The amount in controversy in district court must not exceed $25,000. MCL 600.8301(1).

not operate as a jury demand with regard to collateral claims that are removed to the circuit court because the claims exceed the district court's jurisdictional limits." *Adamski*, 197 Mich App at 130.

2. Other Claims and Counterclaims

Claims or counterclaims of discrimination under the Persons With Disabilities Civil Rights Act or the Elliott-Larsen Civil Rights Act (ELCRA) must be removed from district court to circuit court because circuit courts have exclusive jurisdiction over such claims.[50] MCL 37.1606(2); MCL 37.2801(2). See also *Reynolds v Robert Hasbany MD PLLC*, 323 Mich App 426, 433-434 (2018) (holding that MCL 37.2801(2) "takes precedence over the general jurisdictional grant set forth in MCL 600.8301[of the Revised Judicature Act]," and "provides for exclusive circuit court jurisdiction, regardless of the amount in controversy").

Summary proceedings involving an equitable defense or counterclaim need not be removed from district court. MCR 4.201(H)(2)(a).

4.7 Filings by Incarcerated Individuals

A pleading or other document filed by an unrepresented individual who is incarcerated in prison or jail "must be deemed timely filed if it was deposited in the institution's outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid." MCR 1.112.

4.8 Res Judicata

"The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory." MCL 600.5750. Accordingly, the application of res judicata in the context of a judgment of possession is limited to claims that were actually litigated. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 576-577 (2001). "Interpreting this provision, our Supreme Court has concluded that 'the Legislature took these cases outside the realm of the normal rules

[50] It is not clear whether all or part of an action involving discrimination would be removed to the circuit court.

concerning merger and bar in order that attorneys would not be obliged to fasten all other pending claims to the swiftly moving summary proceedings.'" *King v Munro*, 329 Mich App 594, 602 (2019), quoting *Sewell*, 463 Mich at 574 (concluding that "because plaintiff was not required to bring her negligence claim in the summary-eviction proceedings and the district court did not otherwise resolve the claim, res judicata [did] not bar plaintiff from bringing a negligence claim in the circuit court"). See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 2, for additional information on the doctrine of res judicata.

4.9 Interim Orders

A. Injunctions

MCR 4.201(I)(1) states:

> **Interim Orders.** On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:
>
> > (1) *Injunctions*. The interim order may award injunctive relief
> >
> > > (a) to prevent the person in possession from damaging the property; or
> >
> > > (b) to prevent the person seeking possession from rendering the premises untenantable or from suffering the premises to remain untenantable.

The procedure governing the application for, and the issuance of, injunctions is found in MCR 3.310.

B. Escrow Orders

A court may enter an order that requires the tenant to deposit prospective rent amounts into escrow when the landlord shows a clear need for protection of his or her interests and trial has been adjourned for more than 14 days. MCR 4.201(I)(2)(a). The court may adjust the amount of a tenant's escrow payments based on evidence of the condition of the premises. *Id*.

MCR 4.201(I)(2) states:

Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:

* * *

(2) *Escrow Orders*.

(a) If trial is adjourned more than 14 days and the plaintiff shows a clear need for protection, the court may order the defendant to pay a reasonable rent for the premises from the date the escrow order is entered, including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due. In determining a reasonable rent, the court should consider evidence offered concerning the condition of the premises or other relevant factors. The order must provide that:

(*i*) payments be made to the court clerk within 7 days of the date of entry of the order, and thereafter within 7 days of the date or dates each month when rent would ordinarily be due, until the right to possession is determined;

(*ii*) the plaintiff must not interfere with the obligation of the defendant to comply with the escrow order; and

(*iii*) if the defendant does not comply with the order, the defendant waives the right to a jury trial only as to the possession issue, and the plaintiff is entitled to an immediate trial within 14 days which may be by jury if a party requests it and if, in the court's discretion, the court's schedule permits it. The 14-day limit need not be rigidly adhered to if the plaintiff is responsible for a delay.

(b) Only the court may order the disbursement of money collected under an escrow order. The court must consider the defendant's defenses. If trial was postponed to permit the premises to be repaired, the

> court may condition disbursement by requiring that the repairs be completed by a certain time. Otherwise, the court may condition disbursement as justice requires.

"To have demonstrated a clear need [for an escrow order], [the] plaintiff must have necessarily brought the rent dispute before the district court. [The plaintiff] could not have shown a right to be protected unless he was asserting a claim of right to the rent, and he could not have shown a need for protection unless the defendants contested their duty to pay the rent demanded." *Woods v Hall*, 203 Mich App 222, 224 (1994).

A defendant is entitled to have a jury decide the issue of a rent dispute, and disbursement must not occur until any rent dispute has been settled. *Woods*, 203 Mich App at 225, 226. The court alone is authorized to disburse funds collected in escrow. MCR 4.201(I)(2)(b).

C. Stay of Proceedings

"In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, the court must stay further proceedings after advising the defendant of the rights and information listed in [MCR 4.201(K)(2)(a)] and adjourning the trial under [MCR 4.201(K)]. The court must not proceed to judgment if the defendant has applied for rental assistance from the Michigan Department of Health and Human Services, local Coordinated Entry Agency, Housing Assessment and Resource Agency or federal Help for Homeless Veterans program and provides written proof to the court that the application has been submitted for processing not later than five days after the defendant is verbally informed as provided in [MCR 4.201(K)(2)(a) or MCR 4.201(K)(2)(b)]." MCR 4.201(I)(3)(a).

"The initial stay is lifted after 14 days unless the defendant demonstrates to the court that the application is still pending or has been approved and rental assistance will be received. The total stay period under [MCR 4.201(I)(3)] must not exceed 28 days and is automatically lifted 28 days from the date that the initial stay of the proceedings began." MCR 4.201(I)(3)(b).

4.10 Trials

A. In General

The court may only resolve the case immediately following the advice of rights and information required by MCR 4.201(K)(2)(a)[51] without adjourning the trial in the following circumstances:

- "The plaintiff dismisses the complaint, with or without prejudice, and without any conditions." MCR 4.201(K)(2)(e)(i).

- "The residential defendant is personally served under MCR 2.105(A), service of process was made on the residential defendant under [MCR 4.201(D)] and the court mailed a second copy of the initial summons and complaint in a court envelope and a record was kept pursuant to [MCR 4.201(D)] and fails to appear at the date and time set for trial noticed by the summons under [MCR 4.201(K)(2)(a)], or the commercial defendant is served under [MCR 4.201(D)] and fails to appear at the date and time set for trial noticed by the summons under [MCR 4.201(K)(2)(a)]." MCR 4.201(K)(2)(e)(ii).

- "Both plaintiff and defendant are represented by counsel, and a consent judgment or conditional dismissal is filed with the court." MCR 4.201(K)(2)(e)(iii).

- "The parties enter into a consent judgment or conditional dismissal on the record after knowingly and voluntarily waiving the rights identified in [MCR 4.201(K)(2)(a)] and the adjournment required by [MCR 4.201(K)(2)(d)]. The court must review the defendant's waiver of rights and the terms of the consent judgment or conditional dismissal. After adequate inquiry, if the court determines that a valid waiver exists and the terms are fair, it may enter the consent judgment or conditional dismissal on the record. A defendant who has consulted with an attorney either in person or remotely after receiving the summons and who is waiving these rights is presumed to have knowingly and voluntarily waived the rights identified in [MCR 4.201(K)(2)(a)]." MCR 4.201(K)(2)(e)(iv).

- "[A]ny of the circumstances listed in [MCR 4.201(G)(5)(a)(ii)], except for an action in which MCL 600.5714(1)(b) applies, is pleaded and proved, with notice, sufficient to meet the statutory requirements. Actions in

[51] See Section 4.5(B) for information on the required rights and information the court must provide to the defendant.

> which MCL 600.5714(1)(b) apply shall be heard pursuant to MCL 600.5735(7)." MCR 4.201(K)(2)(e)(v).

Bench trials involving summary proceedings are governed by the procedures found in MCR 2.507 and MCR 2.509(B)-(C). Jury trials are governed by MCR 2.507, MCR 2.508, MCR 2.509(A), and MCR 2.509(C)-(D).

A trial court has discretion to order a jury trial of one or more issues in a case, even when a party had the right to a jury trial and failed to exercise that right. MCR 2.509(B).

B. Scheduling and Pretrial Motions

"Except as otherwise provided by court rule, a summary proceeding shall be heard within 7 days after the defendant's appearance or trial date and shall not be adjourned beyond that time other than by stipulation of the parties either in writing or on the record." MCL 600.5735(6).

Notwithstanding MCL 600.5735(6), and unless otherwise provided in MCR 4.201[52], the court must adjourn the trial as provided in MCR 4.201(K)(1) after verbally advising the parties of the rights and information at the date and time set for trial under MCR 4.201(K)(2)(a). MCR 4.201(K)(2)(d). If the court adjourns the trial after advising the defendant of the rights and information set forth in MCR 4.201(K)(2)(a), "it must be scheduled at least 7 days but not more than 14 days after the initial date and time set for trial noticed by the summons, unless a jury demand is made under [MCR 4.201(G)(4)] or good cause is shown under [MCR 4.201(K)(1)(c)]." MCR 4.201(K)(1)(a).

If good cause is shown, the court may adjourn the trial up to 56 days. MCR 4.201(K)(1)(c). "If the court adjourns trial for more than 14 days, an escrow order may be entered pursuant to [MCR 4.201(I)(2)]."[53] MCR 4.201(K)(1)(c). Additionally, the "parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court." *Id*.

In general, motions must comply with MCR 2.119. After advising the defendant of the rights and information listed in MCR 4.201(K)(2)(a), "the court must decide remaining pretrial motions

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[52] "Actions in which MCL 600.5714(1)(b) apply shall be heard pursuant to MCL 600.5735(7)." MCR 4.201(K)(2)(e)(v). "An action to which [MCL 600.5714(1)(b)] applies shall be heard at the time of the defendant's appearance or trial date and shall not be adjourned beyond that time except for extraordinary reasons." MCL 600.5735(7).

[53] See Section 4.9(B) for additional information on escrow orders.

and determine if there is a triable issue. If there is no triable issue, the court must enter judgment." MCR 4.201(K)(1)(b).[54] The court may only resolve the case immediately following the advice of rights and information required by MCR 4.201(K)(2)(a) without adjourning the trial in limited circumstances. MCR 4.201(K)(1)(c); MCR 4.201(K)(2)(e).

C. Discovery

In general, the court does not facilitate *formal* discovery before entry of judgment unless a party has requested the discovery from the opposing party, and the opposing party has refused the request. "In actions in the district court, no discovery is permitted before entry of judgment except by leave of the court or on the stipulation of all parties. A motion for discovery may not be filed unless the discovery sought has previously been requested and refused." MCR 2.301(A)(2).

D. Burdens of Proof

A landlord has the burden of proving his or her right to possession of the premises. *Rathnaw v Hatch*, 281 Mich 402, 404 (1937). A tenant has the burden of proving any defenses raised, "either as a counterclaim or as an affirmative defense."[55] MCR 2.507(B)(2). The quantum of proof required in civil cases is a preponderance of the evidence. *Miller-Davis Co v Ahrens Const, Inc (On Remand)*, 296 Mich App 56, 71 (2012).

E. Evidence

The Michigan Rules of Evidence apply to summary proceedings.[56] See MRE 101; MRE 1101.

One court rule provision expressly addresses the admission into evidence of government reports in summary proceedings. MCR 4.201(K)(3) states: "If the defendant claims that the plaintiff failed to comply with an ordinance or statute, the court may admit an authenticated copy of any relevant government employee's report filed with a government agency. Objections to the report affect the weight given it, not its admissibility."

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[54]See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 7, for a detailed discussion of civil trial procedure in both bench trials and jury trials.

[55]See Chapter 5 for a discussion of defenses.

[56]A comprehensive discussion of evidentiary issues is beyond the scope of this benchbook. See the Michigan Judicial Institute's *Evidence Benchbook* for information on evidence in civil and criminal matters.

F. Bench Trial: Findings and Conclusions

Specific rules apply in cases tried without a jury. According to MCR 2.517(A):

> (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.
>
> (3) The court may state the findings and conclusions on the record or include them in a written opinion.
>
> (4) Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule. See, e.g., MCR 2.504(B) [involuntary dismissals].
>
> (5) The clerk shall notify the attorneys for the parties of the findings of the court.
>
> (6) Requests for findings are not necessary for purposes of review.
>
> (7) No exception need be taken to a finding or decision.

G. Jury Trial

The right to trial by jury in summary proceedings is guaranteed by the Michigan Constitution, Const 1963, art 1, § 14; by statute, MCL 600.5738; and by court rule, MCR 2.508(A), MCR 4.201(B)(2), and MCR 4.201(G)(4).[57] The existence of "a strong policy in favor of protecting a civil litigant's properly exercised demand for a jury trial" has been recognized in the summary proceedings context. *Adamski v Cole*, 197 Mich App 124, 128 (1992).

1. Jury Selection

> "Procedures for selecting, impaneling and otherwise governing jurors in [summary] proceedings shall be the same

[57] See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 7, for detailed information about civil jury trials.

as for a trial by jury in other civil actions in the same court." MCL 600.5738.

a. Voir Dire

Voir dire of prospective jurors is vital to obtaining an impartial jury. See e.g., *People v Tyburski*, 445 Mich 606, 618 (1994). According to the Michigan Supreme Court: "It is indispensable to a fair trial that a litigant be given a reasonable opportunity to ascertain on the voir dire whether any of the jurors summoned are subject to being challenged for cause or even peremptorily." *Fedorinchik v Stewart*, 289 Mich 436, 438-439 (1939).

"The court may examine prospective jurors or permit the attorneys for the parties to do so"; "[i]f the court examines the prospective jurors, it must permit the attorneys for the parties to (1) ask further questions that the court considers proper, or (2) submit further questions that the court may ask if it considers them proper." MCR 2.511(C). Indeed, the court has discretion over the scope of voir dire; however, the court must permit a scope broad enough to allow for "a showing of facts that would constitute ground for challenging for cause or the reasonable exercise of peremptory challenges." *Fedorinchik*, 289 Mich at 438-439.

b. Challenges to Prospective Jurors

Two distinct kinds of challenges may be made to prospective jurors: challenges for cause and peremptory challenges. See MCR 2.511(E) and MCR 2.511(F), respectively. Challenges for cause allow the removal of any prospective juror about whom articulate reasons exist to doubt his or her fairness or who is otherwise disqualified from serving as a juror in the matter. See MCR 2.511(E)(1)-(12) for a list of reasons a juror may be challenged for cause. See also MCL 600.1337. Peremptory challenges, or challenges without cause, allow the removal of a juror on the basis of a party's subjective impressions about the juror. MCR 2.511(F)(1). In civil jury trials, a party may exercise three peremptory challenges. MCR 2.511(F)(2).

2. Jury Instructions

Although each party must submit a statement of the issues and may submit a theory of the case for the court to read, MCR

2.512(A)(2), the court alone is responsible for charging the jury. MCR 2.512(A)(5); *Johnson v Corbet*, 423 Mich 304, 326-327 (1985). Model Civil Jury Instructions for landlord-tenant matters may be found at M Civ JI 100.01 *et seq*. Use of the Model Civil Jury Instructions is governed by MCR 2.512(D). In addition to providing a written copy, the court must orally deliver preliminary and final instructions. See MCR 2.513(A); MCR 2.513(N)(1); MCR 2.513(N)(3).

Requests for all instructions must be in writing and filed "[a]t a time the court reasonably directs" or "[i]n the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence." MCR 2.512(A)(1). A request must be served on the opposing party or parties. MCR 2.512(A)(3). "The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury." MCR 2.512(A)(4).

To preserve as error the court's giving of or failure to give an instruction, a party must object, on the record, before the jury begins its deliberations, or, when instructions are given after the jury has begun its deliberations, before the deliberations resume. MCR 2.512(C). An objection must "stat[e] specifically the matter to which the party objects and the grounds for the objection." *Id*. The parties must be given an opportunity "to make the objection out of the hearing of the jury." *Id*.

3. Conduct of Jury Trial

MCR 2.513 describes the manner in which a civil jury trial is to be conducted.

4.11 Judgments in General

A. Requirements

If judgment is entered in the tenant's favor, the judgment must comply with MCL 600.5747. MCR 4.201(L)(1). That is, the tenant must be awarded his or her costs, "which shall be taxed and collected in the same manner as other civil judgments for money in the same court." MCL 600.5747.

If judgment is entered in the landlord's favor, there are four possible outcomes:

- The defendant may be ordered to *pay* (money judgment only, no order of eviction (writ of restitution) is issued);

- The defendant may be ordered to *move* (possession judgment other than for nonpayment of rent);
- The defendant may be ordered to *pay or move* (judgment for possession for nonpayment of rent); or
- The defendant may be ordered to *pay and move* (both possession and money judgments). See generally, MCL 600.5741; MCL 600.5744.

A judgment entered for the plaintiff must

> (a) comply with MCL 600.5741;
>
> (b) state when and under what conditions, if any, an order of eviction will issue;
>
> (c) separately state possession and money awards; and
>
> (d) advise the defendant of the right to appeal or file a postjudgment motion within 10 days. [MCR 4.201(L)(1).[58]]

"[A] summary eviction judgment [for nonpayment of rent] *must* state the amount of past-due rent [together with taxed costs] that, if timely paid, will allow a defendant to remain in possession of the premises." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 528 (2009). See also MCL 600.5741; *Birznieks v Cooper*, 405 Mich 319, 331 (1979). Any amount of rent excused by the plaintiff's breach of the lease or by his or her breach of the statutory covenants of habitability must be deducted from the amount owed. MCL 600.5741.

Unless any of the circumstances in MCL 600.5744(3)-(4) apply, a tenant has an express statutory right to avoid an order of eviction by paying the redemption amount (rent due plus taxed costs) within the time stated in the judgment of possession (no less than ten days from the date the possession judgment was entered).[59] MCL 600.5744(5); MCL 600.5744(7); *Birznieks*, 405 Mich at 329-330.[60] The redemption amount may be paid by personal check, and a payment mailed on the tenth day of a ten-day period is considered timely. *Birznieks*, 405 Mich at 332-335. See also *Flynn v Korneffel*, 451 Mich 186, 202-203 (1996).[61]

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[58] See Chapter 6 for information on postjudgment proceedings.

[59] "The date of signing an order or judgment is the date of entry." MCR 2.602(A)(2).

[60] *Birznieks* was decided before 2019 PA 2, effective July 2, 2019, which renumbered MCL 600.5744, subsections (2)-(7) as (3)-(8).

[61] *Flynn* was decided before 2019 PA 2, effective July 2, 2019, which renumbered MCL 600.5744, subsections (2)-(7) as (3)-(8).

The redemption amount stated in the judgment for possession is not a money judgment or judgment for damages and may not be satisfied by an order of eviction. *1300 LaFayette East Coop*, 284 Mich App at 528.

> **Note:** See SCAO Form DC 105, *Judgment/Landlord-Tenant*. SCAO Form DC 105 allows the court to enter a possession judgment and a money judgment using the same form. DC 105 contains separate areas for a possession judgment and for a money judgment. In one area, the court may enter a possession judgment and designate the amount of rent (plus taxed costs) due to the landlord in order for the tenant to retain possession of the premises, and in another area, the court may order the tenant to pay a money judgment to the landlord that consists of an amount of damages plus costs.

B. Costs

Costs awarded in summary proceedings are limited to the allowable costs described in MCL 600.5759 and include costs in the same amounts as in other civil actions in the same court.[62] MCL 600.5759(1); MCR 4.201(L)(4). See also MCR 2.625. Depending on the method by which a summary proceeding is resolved, a court may also award as taxable costs the following amounts:

- Motion resulting in dismissal or judgment—not more than $75, MCL 600.5759(1)(a).
- Default or consent judgment—not more than $75, MCL 600.5759(1)(b).
- Trial of possession claim only—not more than $150, MCL 600.5759(1)(c).
- Trial of money judgment claim only—not more than $150, MCL 600.5759(1)(d).
- Trial including both a possession claim and a money judgment claim—not more than $150, MCL 600.5759(1)(e).

"In determining taxable costs in tenancy cases, the judge shall take into consideration whether the jury or judge found that a portion of the rent allegedly due to the plaintiff was excused by reason of the

[62] However, the costs described in MCL 600.2441 (costs applicable to civil actions or special proceedings in the Supreme Court or in circuit court) do not apply to summary proceedings. MCL 600.5759(1).

plaintiff's breach of the lease or breach of his or her statutory covenants." MCL 600.5759(2).

C. Notice

"The court must mail or deliver a copy of the judgment to the parties. The time period for applying for the order of eviction does not begin to run until the judgment is mailed or delivered." MCR 4.201(L)(5).

D. Equitable Relief

Summary proceedings may result in the court's issuance of injunctive relief

> (a) to prevent the person in possession from damaging the property; or
>
> (b) to prevent the person seeking possession from rendering the premises untenantable, or from suffering the premises to remain untenantable. [MCR 4.201(L)(2).]

The court is also authorized to grant equitable relief as outlined in MCL 600.8302(1) and MCL 600.8302(3). According to MCL 600.8302(3), in a summary proceedings action,

> the district court may hear and determine an equitable claim relating to or arising under chapter 31 [foreclosure of mortgages and land contracts], 33 [partition], or 38 [public nuisances] or involving a right, interest, obligation, or title in land. The court may issue and enforce a judgment or order necessary to effectuate the court's equitable jurisdiction as provided in this subsection, including the establishment of escrow accounts and receiverships.

The court may also order the various remedies described in sections of the Housing Law of Michigan,[63] including ordering landlords to make necessary repairs to property. See generally, MCL 125.534–MCL 125.536; MCR 4.201(H)(1)(a)(*ii*); MCR 4.201(H)(2)(a).

E. Partial Payment

The court must not issue an eviction order if the tenant has paid any part of the amount due on the judgment unless:

[63] See Section 2.4 for more information about the Housing Law of Michigan.

> (a) a hearing is held after the defendant has been given notice and an opportunity to appear, or
>
> (b) the judgment provides that acceptance of partial payment of the amount due under the judgment will not prevent issuance of an order of eviction. [MCR 4.201(M)(5). See also MCR 4.201(L)(3).]

SCAO Form DC 105, *Judgment/Landlord-Tenant*, contains a checkbox next to the statement, "Acceptance of partial payment of the total amount due [will or will not] prevent the court from issuing an order evicting the defendant." Therefore, whether acceptance of partial payment affects issuance of an order of eviction should be clearly indicated on Form DC 105. If, after the expiration of the time stated in the judgment, the landlord seeks an order of eviction, SCAO Form DC 107, *Application and Order of Eviction/Landlord-Tenant/Land Contract*, the landlord is required to disclose whether any sum of money has been received from the tenant since the possession judgment was entered and under what circumstances the money was received. MCR 4.201(M)(1)(c).

4.12 Defaults and Default Judgments

MCR 4.201(G)(5)[64] and MCR 2.603 apply to defaults and default judgments in summary proceedings.[65]

If the defendant fails to appear on the date and time noticed by the summons, the plaintiff may motion the court for entry of a default, and the court may hear the plaintiff's proofs in support of judgment if:

- personal service of process was made on the residential defendant under MCR 2.105, or service of process was made on the residential defendant under MCR 4.201(D) and the court mailed a second copy of the initial summons and complaint in a court envelope and a record was kept pursuant to MCR 4.201(D), or service of process was made on the commercial defendant under MCR 4.201(D); or
- the plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e), or (f) sufficient to meet statutory and court rule requirements; or
- the defendant also fails to appear on the date and time in which the trial was adjourned under MCR 4.201(K)(1); or

[64] MCR 4.201(G)(5) is the only court rule regarding defaults and default judgments that is specific to summary proceedings. Its content is limited to the court's options when a party fails to appear.

[65] See Section 2.7 for information about default judgments and the Servicemembers Civil Relief Act.

- the defendant appears on the date and time noticed by the summons but fails to appear on the date and time in which the trial was adjourned under MCR 4.201(K)(1). MCR 4.201(G)(5)(a).

If the court is satisfied that the complaint has met pleading and proof requirements and a default should be entered under MCR 4.201(G)(5)(a), it must enter a default judgment pursuant to MCL 600.5741 and MCR 4.201(L). MCR 4.201(G)(5)(b).

The default judgment must be mailed to the defendant by the court clerk and inform the defendant that he or she may be evicted from the premises and may be liable for a money judgment, if applicable. MCR 4.201(G)(5)(b).

"If the plaintiff fails to appear, a default judgment as to costs under MCL 600.5747 may be entered." MCR 4.201(G)(5)(c).

Under MCR 2.603(B)(1)(a)(*i*), notice of a plaintiff's intent to request entry of a default judgment must be given to the defaulted party if the defaulted party's agent has entered a general appearance in the action by answering the plaintiff's request for discovery. *Brooks Williamson and Assoc, Inc v Mayflower Constr Co*, 308 Mich App 18, 27 (2014). Where service was not timely, an additional summons must be issued at the plaintiff's request; the additional summons has the same effect as the original summons. MCL 600.5735(3).

Unless a jury demand under MCR 4.201(G)(4) was made or good cause is shown under MCR 4.201(K)(1)(c), the trial must be adjourned for at least seven days, but not more than fourteen days, if a default is not entered and the case is not otherwise resolved. MCR 4.201(G)(5)(d). If the court adjourns the proceedings because of one party's failure to appear, that party must be notified by mail of the new date. *Id*.

Costs awarded in summary proceedings are described in MCL 600.5759 and include costs in the same amounts as in other civil actions in the same court. MCL 600.5759(1); MCR 4.201(L)(4). See also MCR 2.625. MCL 600.5759(1) expressly allows a court to award a maximum cost of $75 in cases of default judgment.

MCR 2.603(D) addresses setting aside a default or a default judgment. "A motion to set aside a default or a default judgment . . . shall be granted only if good cause is shown and a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3), is filed."[66] MCR 2.603(D)(1). See also MCR 2.612 (relief from judgment). However, "when it is shown that [a] party did not receive

[66]See Chapter 6 for information on postjudgment proceedings.

notice of [an] opponent's intent to request a default judgment[as required under MCR 2.603(B)(1)], the requirement in MCR 2.603(D)(1) that a party must show a meritorious defense to set aside a default judgment constitutes a denial of the constitutional right to due process, and . . . that portion of the court rule is unenforceable as applied to a party who has not been provided adequate notice." *Brooks Williamson and Assoc, Inc v Mayflower Constr Co*, 308 Mich App 18, 35, 36 (2014) (citations omitted). For more information on defaults and default judgments, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 4.

4.13 Consent Judgments

MCR 4.201(J) provides:

> **Consent Judgment When Party Is Not Represented.** The following procedures apply to consent judgments and orders entered when either party is not represented by an attorney.
>
> (1) The judgment or order may not be enforced until 3 regular court business days have elapsed after the judgment or order was entered. The judge shall review, in court, a proposed consent judgment or order with the parties, and shall notify them of the delay required by this subrule at the time the terms of the consent judgment or order are placed on the record.
>
> (2) A party who was not represented by an attorney at the time of the consent proceedings may move to set aside the consent judgment or order within the 3-day period. Such a motion stays the judgment or order until the court decides the motion or dismisses it after notice to the moving party.
>
> (3) The court shall set aside a consent judgment or order on a satisfactory showing that the moving party misunderstood the basis for, or the rights which were being relinquished in, the judgment or order.

MCR 3.223 "governs practice and procedure for entering a consent judgment or consent order as an original action." MCR 3.223(A). See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 6, for additional information on original actions to enter a consent judgment or consent order.

Costs awarded in summary proceedings are limited to the costs described in MCL 600.5759 and include costs in the same amounts as in other civil actions in the same court. MCL 600.5759(1); MCR 4.201(L)(4). See also MCR 2.625. MCL 600.5759(1) expressly allows a court to award a maximum taxable cost of $75 for a consent judgment. MCL 600.5759(1)(b).

4.14 Orders of Eviction

A. After Expiration of Time Stated in the Possession Judgment

When an order of eviction was not issued immediately after the judgment of possession was entered, the landlord may apply to the court for an order of eviction after the time stated in the possession judgment expires (at least ten days after the possession judgment is entered). MCL 600.5744(5); MCR 4.201(M)(1).

"Subject to the time restrictions of this section, the court entering a judgment for possession in a summary proceeding shall issue a writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following:

> (a) Leaving the property in an area open to the public or in the public right-of-way.
>
> (b) Delivering the property to the sheriff as authorized by the sheriff." MCL 600.5744(1).

"Abandonment of the premises that is the subject of a writ under [MCL 600.5744(1)] and of any personal property on the premises must be determined by the officer, bailiff, sheriff, or deputy sheriff serving the writ." MCL 600.5744(2).

The landlord may use SCAO Form DC 107, *Application and Order of Eviction/Landlord-Tenant/Land Contract*, to apply for the order of eviction or the landlord may submit an application that complies with the following requirements:

- The application must be in writing. MCR 4.201(M)(1)(a).
- The application must "be verified by a person having knowledge of the facts stated[.]" MCR 4.201(M)(1)(b).
- The application must indicate whether the tenant has paid the landlord any money since the possession judgment was entered, and if so, under what conditions the landlord accepted the money. MCR 4.201(M)(1)(c).

- The application must "state whether the party awarded judgment has complied with [the judgment's] terms." MCR 4.201(M)(1)(d).

A copy of the application must be served on the tenant. See MCR 2.107(A)(1).

There are specific time requirements for the issuance and execution of an order of eviction entered after the plaintiff's application:

- The order of eviction must be issued no later than 56 days after entry of the possession judgment, "[u]nless a hearing is held after the defendant has been given notice and an opportunity to appear[.]" MCR 4.201(M)(4)(a).

- The order of eviction must be executed no later than 56 days after the order is issued, "[u]nless a hearing is held after the defendant has been given notice and an opportunity to appear[.]" MCR 4.201(M)(4)(b).

- Subject to the 56-day provisions in MCR 4.201(M)(4)(a)-(b), an order of eviction "shall be delivered to the person serving the order for service within 7 days after the order is filed." MCR 4.201(M)(2).

B. Immediately After Entry of the Possession Judgment

The court may issue an order of eviction immediately after entering a judgment of possession. MCR 4.201(M)(3). An immediate order of eviction requires that

- "the court is convinced the statutory requirements are satisfied[.]" MCR 4.201(M)(3)(a).

- the defendant had notice before entry of the possession judgment that the plaintiff had requested immediate entry of an order of eviction. MCR 4.201(M)(3)(b).

The statutory requirements for the issuance of an order of eviction immediately after entry of a possession judgment are as follows:

> On conditions determined by the court, a writ of restitution may be issued immediately after the entry of a judgment for possession if any of the following is pleaded and proved, with notice, to the satisfaction of the court:
>
> > (a) The premises are subject to inspection and certificate of compliance under the housing law of Michigan, . . .[67] and the certificate or temporary

> certificate has not been issued and the premises have been ordered vacated.
>
> (b) Forcible entry was made contrary to law.
>
> (c) Entry was made peaceably but possession is unlawfully held by force.
>
> (d) The defendant came into possession by trespass without color of title or other possessory interest.
>
> (e) The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.
>
> (f) The action is an action to which [MCL 600.5714(1)(b)] applies [termination of lease due to controlled substances violation]. [MCL 600.5744(3).]

"The court may condition the order to protect the defendant's interest." MCR 4.201(M)(3).

C. If Appeal or Motion for New Trial Is Filed

"If an appeal is taken or a motion for new trial is filed before the expiration of the period during which a writ of restitution must not be issued and if a bond to stay proceedings is filed, the period during which the writ must not be issued is tolled until the disposition of the appeal or motion for new trial is final."[68] MCL 600.5744(6).

D. Redemption and Partial Payment

An order of eviction (writ of restitution) must not be entered if the tenant, within the time provided, pays to the landlord the amount due as stated in the possession judgment with taxed costs. MCL 600.5744(7).

An order of eviction may be issued even when a landlord has accepted partial payment of the amount due under the possession judgment if the tenant has been given notice of, and the opportunity

[67] See Section 2.4 for information on the Housing Law of Michigan.

[68] See Chapter 6 for information on postjudgment proceedings.

to appear at, a hearing held on the matter, or if the judgment expressly indicates that partial payment will not prevent an order of eviction. MCR 4.201(L)(3); MCR 4.201(M)(5).

E. Fees and Objections to Fees

A $15 fee is charged for the issuance of an order of eviction. MCL 600.5757.

Other fees apply to the service and execution of an order of eviction. MCL 600.2559(1)(*l*) authorizes the following fees, for each defendant, for the service and execution of an order of eviction: "$40.00 plus mileage, plus the actual and reasonable expense for the physical removal of property from the premises." However, a process server may charge fees in excess of the amount provided in MCL 600.2559(1)(*l*) "if the fee is agreed to in advance in writing by the person serving process and the person requesting the service." MCL 600.2559(7).

A party may object to the fees charged for the service and execution of an order of eviction:

> Objections [to fees covered by statute for orders of eviction] shall be by motion. The fee to be paid shall be reasonable in light of all the circumstances. In determining the reasonableness of a fee, the court shall consider all issues bearing on reasonableness, including but not limited to
>
> (1) the time of travel to the premises,
>
> (2) the time necessary to execute the order,
>
> (3) the amount and weight of the personal property removed from the premises,
>
> (4) who removed the personal property from the premises,
>
> (5) the distance that the personal property was moved from the premises, and
>
> (6) the actual expenses incurred in executing the order of eviction. [MCR 4.201(P).]

Chapter 5: Defenses to Summary Proceedings

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5.1 Introduction[1]

In Michigan, summary proceedings and other actions relating to leases are to be treated "in the same manner as [] any other matter involving a duly executed contract." *Rome v Walker*, 38 Mich App 458, 463 (1972). "Summary proceedings for dispossessing an occupant of premises are purely statutory. . . . To be valid the statutory requirements and limitations set must be strictly observed and complied with." *Gregor v Old*, 209 Mich 43, 49 (1920). See also 11A Michigan Pleading & Practice (2d ed), § 88:3.

A landlord has the burden of proving his or her right to possession of the premises. *Rathnaw v Hatch*, 281 Mich 402, 404 (1937). A tenant has the burden of proving any defenses raised, "either as a counterclaim or as an affirmative defense." See MCR 2.507(B)(2). The quantum of proof required in civil cases is a preponderance of the evidence. *Miller-Davis Co v Ahrens Const, Inc (On Remand)*, 296 Mich App 56, 71 (2012).

5.2 Inadequate Notice

A summary of the notice required to properly initiate summary proceedings is provided in this section for purposes of illustrating aspects of the notice process subject to challenge by the tenant.[2]

A. Complaint

A complaint that initiates summary proceedings must comply with the requirements of MCR 4.201(B). At a minimum, the complaint must:

- be in compliance with general pleading requirements. MCR 4.201(B)(1)(a).
- "have attached to it a copy of any written instrument on which occupancy was or is based[.]" MCR 4.201(B)(1)(b).
- "have attached to it copies of any notice to quit and any demand for possession" showing when and how the notice and demand were served. MCR 4.201(B)(1)(c).
- contain a description of the premises or the tenant's part of the premises. MCR 4.201(B)(1)(d).

[1]For assistance in understanding and managing landlord-tenant matters see http://michiganlegalhelp.org/self-help-tools/housing.

[2]See Chapter 4 for a detailed discussion of notice requirements under the Summary Proceedings Act. See Chapter 3 for a discussion of notice requirements for governmentally subsidized housing.

- show that the landlord is entitled to possession and explain why the tenant's possession "is improper or unauthorized." MCR 4.201(B)(1)(e).

- be filed with a jury demand if the landlord wants a jury trial. MCR 4.201(B)(2). "The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and information under [MCR 4.201(K)(2)(a)], unless payment of fees is waived under MCR 2.002." MCR 4.201(B)(2).

B. Service of Process for Complaint

Proper service in summary proceedings requires that the summons and complaint be delivered to the tenant in two ways:

- The summons and complaint must be mailed to the tenant, and

- The summons and complaint must be delivered by a method described in MCR 2.105,[3] or must be delivered to a proper member of the tenant's household with instructions to deliver it to the tenant, or if personal service cannot be made, must be tacked to the premises. MCR 4.201(D)(1)-(3).

"Service-of-process rules are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses." *Hill v Frawley*, 155 Mich App 611, 613 (1986). See also MCR 2.105(K)(1).

Service of process under MCR 2.105 must be completed, or a tenant must appear or answer the complaint, before a court may enter a money judgment against the tenant. MCR 4.201(H)(1)(b). If service is not made and the tenant does not appear or answer the complaint, "a money claim must be . . . dismissed without prejudice, or . . . adjourned until service of process is complete[.]" MCR 4.201(H)(1)(b)(*i*)-(*ii*).

"An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." MCR 2.105(K)(3). A defendant may appear at the first hearing and claim that service of process was insufficient as long as the defendant makes the claim in

[3]Service under MCR 2.105 may be made by personal delivery, or by registered or certified mail with delivery restricted to the addressee and return receipt requested.

his or her first motion for summary disposition or first responsive pleading, whichever comes first. *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 293 (2007). See MCR 2.116(D)(1). Dismissal is appropriate, however, when there is "a complete failure of service of process." *Holliday v Townley*, 189 Mich App 424, 425-426 (1991).

C. Notices to Quit and Demands for Possession

1. Notices to Quit

With the exception of a notice to quit in cases involving a controlled substance violation (the notice to quit must be written), no specific form or content guidelines apply to notices to quit. However, depending on the type of tenancy involved, a notice to quit must allow the tenant a specified amount of time to vacate the premises or, if applicable, otherwise remedy the landlord's claim against the tenant. *Summary proceedings may not begin unless and until a tenant* holds over *after the time specified in the following notices to quit.*

- **Tenancy at will or by sufferance.** A tenant at will or by sufferance must be given one month to vacate the premises, or if the interval between rent payments under a lease is less than three months, a period of time equal to that interval. MCL 554.134(1). See also MCL 600.5714(1)(c)(*iii*) (summary proceedings to recover possession if tenant holds over after time stated in notice to quit).

- **Nonpayment of rent.** A tenant is entitled to a seven-day notice to quit. MCL 554.134(2).[4] See also MCL 600.5714(1)(c)(*iii*) (summary proceedings to recover possession if tenant holds over after time stated in notice to quit).

- **Year-to-year tenancy.** A tenant must be given a one-year notice to quit. MCL 554.134(3). See also MCL 600.5714(1)(c)(*iii*) (summary proceedings to recover possession if tenant holds over after time stated in notice to quit).

- **Controlled substance violation on the premises.** A tenant must be given a 24-hour written notice to vacate the premises. MCL 554.134(4).[5] See also MCL

[4] A similar provision involving a written demand for possession appears in MCL 600.5714(1)(a) of the Summary Proceedings Act.

[5] A similar provision involving a written demand for possession appears in MCL 600.5714(1)(b) of the Summary Proceedings Act.

600.5714(1)(c)(*iii*) (summary proceedings to recover possession if tenant holds over after time stated in notice to quit).

2. Demands for Possession

Specific content and service requirements apply to demands for possession.

a. Content

According to MCL 600.5716, a demand for possession must:

- be written,
- be addressed to the person in possession of the premises,
- give the address or description of the premises,
- clearly state the reasons for the demand,
- clearly state the time in which the tenant must take remedial action, and
- be dated and signed by the person entitled to possession of the premises, or his or her attorney or agent.

If the demand for possession is based on nonpayment of rent or other sums due, the demand for possession must state the amount due at the time of the demand. MCL 600.5716.

b. Service

The requirements of properly serving a demand for possession are found in MCL 600.5718(1), which states that the demand for possession must:

- be personally delivered to the tenant, MCL 600.5718(1)(a), or
- be personally delivered on the premises to a member of the tenant's family or household or an employee who is of suitable age and discretion with instructions to deliver the demand to the tenant, MCL 600.5718(1)(b), or

- be sent by first-class mail addressed to the tenant, MCL 600.5718(1)(c), or

- be sent by electronic service, "if [the tenant] has in writing specifically consented to electronic service of the demand and if the consent or confirmation of the consent has been sent by 1 party and affirmatively replied to, by electronic transmission, by the other party." MCL 600.5718(1)(d).

"If the demand is mailed, the date of service . . . is the next regular day for delivery of mail after the day when it was mailed." MCL 600.5718(1)(c).

The use of electronic service is subject to MCL 600.5718(2), which provides:

> The electronic service address used by a party in the process under [MCL 600.5718(1)(d)] shall be considered to remain that party's correct, functioning electronic service address, unless the process under [MCL 600.5718(1)(d)] is repeated using a different electronic service address for that party or unless that party notifies the other in writing that that party no longer has an electronic service address. A landlord shall not refuse to enter a lease because the prospective tenant declines to consent to electronic service under [MCL 600.5718].

c. Initiating Summary Proceedings

Summary proceedings may not begin unless and until a tenant holds over *after the time specified in the following demands for possession*.

- **Nonpayment of rent.** A tenant must be given seven days to vacate the premises or pay the amount due plus taxed costs. MCL 600.5714(1)(a);[6] MCL 600.5744(7).

- **Controlled substance violation on the premises.** A tenant must be given a 24-hour written notice. MCL 600.5714(1)(b).[7]

[6] A similar provision appears in MCL 554.134(2).

[7] A similar provision appears in MCL 554.134(4).

- **Health hazard on, or physical injury to, the premises.** A tenant is entitled to seven days to vacate the premises. MCL 600.5714(1)(d). Summary proceedings on this basis may not begin more than 90 days after the landlord discovered or should have discovered the condition of the premises. *Id*.

- **Causing or threatening physical injury to an individual.** A tenant must be given a seven-day notice to vacate the premises. MCL 600.5714(1)(e).

D. No Statutory Notice Required

Applicable statutory provisions do not require a landlord to first serve the tenant with a notice to quit or a demand for possession before initiating summary proceedings in the following circumstances:[8]

- **Holding over after expiration of the term of demise.**[9] MCL 600.5714(1)(c)(*ii*).

- **Being in possession after forcible entry, holding possession by force after peaceable entry, or trespassing.** MCL 600.5714(1)(f).

- **Continuing in possession after redemption period following the sale of the premises by mortgage or execution.** MCL 600.5714(1)(g).

- **Continuing in possession after the premises are sold by authority of the probate court or by will.** MCL 600.5714(1)(h).

Committee Tip:

The fact that no formal notice to quit or demand for possession is required in the situations above does not mean that a landlord may take

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[8]**Note:** Although the statutory provisions applicable to these situations do not require that any formal notice to quit or demand for possession be given to the tenant before the initiation of summary proceedings, logic dictates that (except where the term of the lease has expired or where the tenant is aware his or her possession is unlawful) a tenant is somehow made aware of the landlord's expectation that the tenant will vacate the premises by a certain date after which the tenant will be considered as holding over.

[9]Depending on the circumstances, a tenant who holds over after the term of a lease has expired may become a tenant at will or a tenant by sufferance and would be entitled to at least a one-month notice to quit before a landlord could initiate summary proceedings. MCL 554.134(1); MCL 600.5714(1)(c)(*iii*).

*immediate possession of the premises. The landlord **must** initiate summary proceedings in order to recover possession, and the **court** must determine whether the landlord is lawfully entitled to possession of the premises under the circumstances.*

E. Notice Determined By Lease

- **Holding over after termination of the lease "pursuant to a power to terminate[.]"** MCL 600.5714(1)(c)(*i*).

The applicable statute in the Summary Proceedings Act does not specify that any notice be given before initiating summary proceedings when a lease is terminated pursuant to a provision in the lease (a *power to terminate*). MCL 600.5714(1)(c)(*i*). While there is no *statutory* requirement of notice, the notice requirement should be contained in the *lease* itself. A *power to terminate* included in a lease must clearly indicate what action or omission by the tenant permits the landlord to elect such a remedy, and the lease must specify the notice of termination to which the tenant is entitled. *Erickson v Bay City Glass Co*, 6 Mich App 260, 265 (1967).

Committee Tip:

A one-month notice is the most commonly used notice period applicable to the termination of a tenancy where a lease exists. In most cases, the interval between payments is one month, and the committee believes that a tenant under a valid lease should be entitled to as much notice as is a tenant in possession of the premises without a lease (tenants at will or by sufferance).

F. Acceptance of Rent After Notice to Terminate

When a landlord accepts a tenant's payment for his or her occupancy of the premises for a period of time after the date by which the tenant was expected to vacate, a tenant may reasonably conclude that the landlord no longer intends that the tenant vacate the premises. *Park Forest of Blackman v Smith*, 112 Mich App 421, 426 (1982). Therefore, "[a] landlord waives the notice to terminate by accepting rental payments for a period of time subsequent to the date specified in the notice." *Id*. The *Park Forest* Court suggested that in such a case, "[a]

new notice to terminate then must be sent to the tenant before the summary proceedings can be commenced." *Id*. at 425. See also *Aspen Enterprises, Ltd v Bray*, 148 Mich App 9, 12-13 (1985), where the Court stated: "Acceptance of rent after efforts to gain possession have been commenced may result in a waiver[,]" but "[r]eceipt of rent checks after sending a notice to quit does not automatically constitute waiver." However, "the landlord's retention of [] payment [for future rent], without more, constitutes a waiver of the notice." *Id*. at 14.

5.3 Nonpayment Claims

In summary proceedings based on the tenant's nonpayment of rent, the landlord must plead and prove the following:

- "the rental period and rate[.]" MCR 4.201(B)(3)(a)(*i*).
- "the amount due and unpaid when the complaint was filed[.]" MCR 4.201(B)(3)(a)(*ii*).
- "the date or dates the payments became due." MCR 4.201(B)(3)(a)(*iii*).

"Tenants may . . . raise any defense, which would justify the withholding of rent, in an action by the landlord to regain possession for nonpayment of rent." *Rome v Walker*, 38 Mich App 458, 464 (1972). The following defenses are available to a tenant defending against a termination of tenancy for nonpayment of rent due:

- The tenant made payment or partial payment or paid the redemption amount.
- The amount owing should be abated.
- The case involves actual or constructive eviction.
- The amount owed was eliminated or reduced by the tenant's right to repair and deduct.
- Payment was made to or by a third party.
- The landlord breached the lease.

A. Payment of Rent or Redemption Amount

A tenant may avoid a judgment of possession for nonpayment of rent if the tenant pays the rent due within the seven-day period of time permitted by MCL 600.5714(1)(a) (demand for possession). See MCL 600.5744(7).

In addition, in most circumstances, a tenant may avoid eviction even after entry of a judgment of possession following summary proceedings. Unless any of the circumstances in MCL 600.5744(3)-(4) apply (immediate issuance of an order of eviction (writ of restitution) or judgment of possession based on forfeiture of an executory contract, respectively), a tenant has an express statutory right to avoid an order of eviction by paying the redemption amount (rent due plus taxed costs) within the time stated in the judgment of possession (no less than ten days from the date the possession judgment was entered).[10] MCL 600.5744(5); MCL 600.5744(7); *Birznieks v Cooper*, 405 Mich 319, 329-330 (1979).[11]

A tenant may be entitled to have all or part of his or her security deposit applied against any rent owing. MCL 554.607(b); *Hovanesian v Nam*, 213 Mich App 231, 235 (1995).[12]

B. Rent Abatement

Tenants defending against eviction actions for nonpayment of rent may seek to enforce the habitability covenants when the landlord's alleged failure to comply with the covenants constitutes a defense to payment of rent. See MCL 600.5741, which states in part: "In determining the amount due under a tenancy the jury or judge shall deduct any portion of the rent which the jury or judge finds to be excused by the plaintiff's breach . . . of 1 or more statutory covenants imposed by . . . [MCL] 554.139[.]"

A landlord seeking possession of residential premises "must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended, in reasonable repair during the term of the lease . . . , and in compliance with applicable state and local health and safety laws, except when the disrepair or violation has been caused by the tenant's willful or irresponsible conduct or lack of conduct, or the parties to the lease . . . have modified those obligations, as provided for by statute. Plaintiff must explain any defects in this allegation, for example local government's failure to inspect despite a request to do so."[13] MCR 4.201(B)(3)(c). A judgment of possession must not be entered if it is established "[t]hat the [landlord] committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent." MCL 600.5720(1)(f).

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[10] "The date of signing an order or judgment is the date of entry." MCR 2.602(A)(2).

[11] *Birznieks* was decided before 2019 PA 2, effective July 2, 2019, which renumbered MCL 600.5744, subsections (2)-(7) as (3)-(8).

[12] See Section 2.1 for more information on security deposits.

[13] "A court may not refuse a filing based on anything in [MCR 4.201(B)(3)(c)]." MCR 4.201(B)(3)(c).

The habitability covenants apply to all agreements to lease residential property. See MCL 554.139(1)(a)-(b), which state that a landlord covenants that the property is fit for its intended use, that he or she will keep the property in reasonable repair during the lease term, and that he or she will comply with government health and safety laws "except when the disrepair or violation of the applicable health or safety laws has been caused by the tenant[']s wilful or irresponsible conduct or lack of conduct." The Housing Law of Michigan has a general provision requiring that "[e]very dwelling and all the parts thereof including plumbing, heating, ventilating and electrical wiring shall be kept in good repair by the owner." MCL 125.471. A landlord is required to keep in good repair appliances furnished by the landlord. *Hockenhull v Cutler Hubble, Inc*, 39 Mich App 163, 167-168 (1972) (gas cooking stove).

The court or the jury must determine the amount of rent abated under circumstances that warrant an abatement. See MCL 600.5741, which states in part:

> If it is found that the [landlord] is entitled to possession of the premises, in consequence of the nonpayment of any money due under a tenancy, . . . the jury or judge making the finding shall determine the amount due or in arrears at the time of trial which amount shall be stated in the judgment for possession. In determining the amount due under a tenancy the jury or judge shall deduct any portion of the rent which the jury or judge finds to be excused by the [landlord's] breach of the lease or by his breach of 1 or more statutory covenants imposed by [MCL 554.139]. The statement in the judgment for possession shall be only for the purpose of prescribing the amount which, together with taxed costs, shall be paid to preclude issuance of the [order of eviction.[14]]

Additionally, the court rules authorize interim orders and injunctive relief "to prevent the person in possession from damaging the property[,] or [] to prevent the person seeking possession from rendering the premises untenantable or from suffering the premises to remain untenantable." MCR 4.201(I)(1)(a)-(b).

[14]See Restatement Property, 2d, § 11.1, for methods of calculating the amount of rent abatement.

C. Actual, Partial, or Constructive Eviction[15]

An eviction does not require "an actual, physical expulsion from the [premises]. Any act or acts of the landlord which deprived the tenant of the beneficial enjoyment of the [premises] to which he was entitled under the lease would amount in law to an eviction." *Bamlet Realty Co v Doff*, 183 Mich 694, 702 (1915).

Any wrongful eviction, including a partial eviction, caused by the landlord or an agent of the landlord results in an abatement of rent during the existence of the conditions that caused the eviction or until the end of the lease under which the premises are held, whichever comes first. *Ravet v Garelick*, 221 Mich 70, 72 (1922); *Kuschinsky v Flanigan*, 170 Mich 245, 247-248 (1912). In the event of a partial eviction, a tenant is not required to vacate the premises; rather, a tenant "may remain in possession [of the premises] during the remainder of [the lease] term." *Ravet*, 221 Mich at 72.

A tenant who remains in possession of premises from which he or she has been partially evicted has not consented to the eviction, and the tenant's voluntary payment of rent does not operate as a waiver. *Kuschinsky*, 170 Mich at 248. Only a new contract by which the tenant agrees to pay rent for the premises can renew the tenant's duty to pay the landlord for occupying the premises. *Id*.

Partial eviction is a defense to an action against a tenant for failure to pay rent if the eviction occurs during the term of a tenant's lease. *Ravet*, 221 Mich at 71. A tenant at will may raise the defense only during the time in which he or she was entitled to possession of the premises. *McVeigh v McAlpine*, 335 Mich 413, 415 (1953). The time before which a notice to quit becomes effective constitutes the "remainder of [the lease] term" for purposes of such a tenant's defense of partial eviction to a claim of nonpayment. *Id*.

A tenant's eviction from part of the rented premises entirely suspends the tenant's duty to pay rent; the tenant is not required to apportion the rental amount based on the part of the premises he or she is able to inhabit. *Kuschinsky*, 170 Mich at 247-248.

"Constructive eviction occurs 'when the act of the landlord is of such a character as to deprive the tenant . . . of the beneficial use and enjoyment of the whole or any part of the demised property, to the extent he is thus deprived.'" *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 474-475 (2003), quoting *Bamlet Realty*, 183 Mich at 703 (alteration added). The circumstances may cause the tenant to

[15] See Section 1.3 for a detailed discussion of MCL 600.2918, the anti-lockout statute.

abandon the premises in whole or in part. *Briarwood v Faber's Fabrics, Inc*, 163 Mich App 784, 790 n 2 (1987).

In addition to the tenant's ability to use constructive or actual eviction as a defense to a landlord's claim for unpaid rent, the tenant may also initiate an action against the landlord for "forcible and unlawful" ejection or for unlawful interference with his or her possessory interest in the premises. MCL 600.2918(1)-(2). In addition to recovering possession of the premises, a successful action under MCL 600.2918(1) (forcible and unlawful ejection) entitles the tenant to the greater of three times the amount of his or her actual damages or $200, and a successful action under MCL 600.2918(2) (unlawful interference with possessory interest) entitles the tenant to the greater of the amount of his or her actual damages or $200.[16] MCL 600.2918(1)-(2). There are times, however, when a landlord's interference with a tenant's possessory interest is authorized.[17] See MCL 600.2918(3).

D. Repair and Deduct

A tenant's right to repair and deduct was recognized in *Anchor Inn of Mich, Inc v Knopman*, 71 Mich App 64, 67 (1976) (defective air conditioning apparatus):

> Where the landlord has covenanted to make repairs and fails to do so, the tenant, after giving reasonable notice to the landlord, may make the repairs and recover the cost of such repairs from the landlord or he may deduct the cost from the rent. Unless the landlord's duty to repair is expressly made conditional upon receipt of notice from the tenant, such duty may arise from the landlord's actual knowledge of the need for repair. [Citations omitted.]

E. Payment to or by Third Party

MCL 600.5720(1)(g) prohibits entry of a judgment for possession for nonpayment of rent where the tenant establishes

> [t]hat the rent allegedly due, in an action where possession is claimed for nonpayment of rent, was paid into an escrow account under [MCL 125.530 (certificate of compliance violations)]; was paid pursuant to a court

[16] See Section 1.3 for a detailed discussion of the statute applicable to forcible and unlawful ejection and unlawful interference with a possessory interest.

[17] See Section 1.3(C).

> order under [MCL 125.534(5) (notice of violation and deduction from rent of cost of repairs)]; or was paid to a receiver under [MCL 125.535 (appointment of receiver when suit brought against owner to enforce the Housing Law of Michigan)].

MCL 400.14(1)(c) also prohibits a landlord from "maintain[ing] an action for the rent or possession of the premises" when a government agency withholds the tenant's public rent assistance because of code violations for which the landlord is responsible. See also MCL 400.14c (public assistance for rent shall not be paid "for any dwelling that does not meet the [minimum housing] standard[s] established under [MCL 400.14c]").

F. Landlord's Breach

"A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a [tenant] if . . . the [landlord] committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent." MCL 600.5720(1)(f).

5.4 Retaliation

The defense of retaliatory eviction prohibits the court from granting "[a] judgment for possession of the premises for an alleged termination of tenancy" under the following circumstances:

- **Tenant's attempt to enforce rights under lease provisions or under law.** A judgment for possession is prohibited if it "was intended primarily as a penalty for the [tenant's] attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States." MCL 600.5720(1)(a).

- **Tenant's complaint of code violations to a governmental agency.** A judgment for possession is prohibited if it "was intended primarily as a penalty for the [tenant's] complaint to a governmental authority with a report of [the landlord's] violation of a health or safety code or ordinance." MCL 600.5720(1)(b).

- **Tenant's lawful conduct arising from the tenancy, including the tenant's membership in a tenant organization and its activity.** A judgment for possession is prohibited if it "was intended primarily as retribution for a lawful act arising out of the tenancy, including membership in a tenant organization and a lawful

activity of a tenant organization arising out of the tenancy." MCL 600.5720(1)(c).

- **Tenant's failure to comply with increased obligations imposed by the landlord as a penalty for the tenant's lawful conduct under** MCL 600.5720(1)(a)-(c). A judgment for possession is prohibited if "[the landlord] attempted to increase the [tenant's] obligations under the lease or contract as a penalty for the lawful acts . . . described in [MCL 600.5720(1)(a)-(c)] and . . . the [tenant's] failure to perform the additional obligations was the primary reason for the alleged termination of tenancy." MCL 600.5720(1)(e).

Committee Tip:

An increase in the tenant's obligations is not limited to an increase in rent. For example, a landlord might require the tenant to pay utility or other bills previously paid by the landlord or to assume tasks formerly performed by the landlord.

A presumption of retaliation arises when a tenant can show that he or she "by means of official action to or through a court or other governmental agency" formally "attempted to secure or enforce rights against the [landlord] or to complain against the [landlord]" within 90 days of the landlord's initiation of summary proceedings as long as the tenant's attempt or complaint was not dismissed or denied. MCL 600.5720(2).

When a presumption of retaliation arises, the burden of proof shifts to the party against whom the presumption exists. According to the Michigan Supreme Court:

> [T]he function of a presumption is solely to place the burden of producing evidence on the opposing party. It is a procedural device which allows a person relying on the presumption to avoid a directed verdict, and it permits that person a directed verdict if the opposing party fails to introduce evidence rebutting the presumption. [*Widmayer v Leonard*, 422 Mich 280, 289 (1985).]

If the tenant establishes that his or her attempt or complaint occurred within 90 days of the landlord's initiation of proceedings the burden shifts to the landlord to show "by a preponderance of the evidence that the termination of tenancy was not in retaliation for the acts." MCL 600.5720(2).

If the landlord initiated summary proceedings more than 90 days after the tenant's attempt to secure or enforce rights or complain against the landlord, or if the tenant's complaint or other action was dismissed or denied, the landlord benefits from a presumption against retaliation. MCL 600.5720(2). When the presumption favors the landlord, the tenant has the burden of proving by a preponderance of the evidence that the landlord retaliated against the tenant by initiating summary proceedings after the tenant complained or took other action. *Id*.

"[T]he retaliatory eviction defense does not extend to summary proceedings instituted at the expiration of a fixed-term lease" because at the expiration of a fixed-term lease the tenant no longer has a right to possession of the premises. *Frenchtown Villa v Meadors*, 117 Mich App 683, 689 (1982). In *Frenchtown Villa*, the Court explained that although a landlord may be culpable under MCL 600.5720 for terminating a tenant's month-to-month tenancy in retaliation for the tenant's assertion of rights, a landlord's motive for not renewing a tenancy that terminated at the expiration of the term of tenancy stated in the lease was irrelevant. *Frenchtown Villa*, 117 Mich App at 689. According to the Court, "a landlord seeking repossession of premises upon the expiration of the term of a fixed lease does not terminate the tenancy, but merely seeks repossession pursuant to the termination that has otherwise taken place." *Id*.

5.5 Fair Housing Act and Civil Rights Violations

A. Federal Protection

In general, the federal Fair Housing Act (FHA)[18] prohibits a landlord from discriminating against any person in the rental or sale of housing on the basis of that person's race, color, religion, sex, disability, familial status, or national origin. 42 USC 3601 *et seq*.[19] The FHA applies to all dwellings except

- single-family homes rented out by the owner without the use of a broker as long as the owner does not own more than three such houses at the same time, and
- dwellings with up to four independent units if the owner of the dwelling also occupies one of the units as

[18]See https://www.hud.gov/stat/fheo/rights-obligations for more information.

[19]See the federal Rehabilitation Act for additional protection against discrimination based on disability in cases involving housing that receives federal assistance. 29 USC 794. See also the federal Age Discrimination Act which prohibits discrimination based on age in cases involving housing that receives federal assistance.

his or her residence. 42 USC 3603(a)(2); 42 USC 3603(b)(1)-(2).

Under the FHA,[20] a landlord must not, on the basis of any person's race, color, religion, sex, disability,[21] familial status,[22] or national origin,

- refuse to rent housing to the person. 42 USC 3604(a).[23]
- discriminate against the person "in the terms, conditions, or privileges of [rental housing], or in the provision of services or facilities in connection [with the rental housing.]" 42 USC 3604(b).[24]
- make, print, or publish any material regarding rental housing that suggests "any preference, limitation, or discrimination" on a basis prohibited by the FHA, or intend to make such a preference, limitation, or discrimination. 42 USC 3604(c).
- indicate that any rental housing is unavailable for inspection or rental when it is actually available. 42 USC 3604(d).

In addition, a person must not, for profit, persuade or attempt to persuade any person to rent any dwelling by claims regarding "the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin." 42 USC 3604(e).

The FHA prohibits discrimination against a person because of that person's disability, because of the disability of an individual living with or intending to live with that person, or because of the disability of an individual associated with that person. See 42 USC 3604(f)(1) (rental housing, in general), 42 USC 3604(f)(2) (terms, conditions, privileges, or the provision of services or facilities related to the rental housing), and 42 USC 3604(f)(3)(B) ("reasonable accommodations in

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[20] See 42 USC 3607 for limited exceptions granted to certain religious and nonprofit organizations, and governmental entities.

[21] 42 USC 3604(f) of the FHA specifically addresses *handicap* (*disability*). The term *handicap* appears in some, but not all, of the other provisions of 42 USC 3604 that prohibit specific conduct based on a person's status. For purposes of this benchbook, the more contemporary term, *disability*, will be used instead of the term *handicap*.

[22] Nothing in 42 USC 3604 "regarding familial status appl[ies] with respect to housing for older persons." See 42 USC 3607(b)(1). See 42 USC 3607(b)(2) for what constitutes *housing for older persons*.

[23] *Disability* does not appear in this provision. See 42 USC 3604(f)(1) for a similar provision regarding disability.

[24] *Disability* does not appear in this provision. See 42 USC 3604(f)(2) for a similar provision regarding disability.

rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling").

It is further prohibited under the FHA to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title." 42 USC 3617.

"[T]he proponent[] of [an] FHA defense to [an] eviction action, [bears] the burden of proving that [the proponent has] a 'handicap' and require[s] accommodation 'to use and enjoy [his] dwelling' because of that handicap." *Riverbrook v Fabode*, 333 Mich App 645, 657 (2020) (eighth alteration in original).[25] A court is required to consider the validity of the evidence presented and determine if it actually supports the claim. *Id*. at 648, 657 (finding that the lower courts erred by abandoning "their roles as the gatekeepers of evidence under MRE 702" when they "rejected the landlord's attempt to challenge the validity of the documents presented by the tenant to support his need for an [emotional support animal]").

B. State Protection

Michigan's civil rights acts also protect tenants from retaliatory evictions and other wrongful terminations or evictions based on the protected class status of a tenant. See the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*., and the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*.

In general, a person "engaging in a real estate transaction" is prohibited from discriminating against an individual, or anyone associated or residing with an individual, on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, marital status, or disability. MCL 37.1502(1) (PWDCRA); MCL 37.2502(1) (ELCRA). A *real estate transaction* for purposes of both the PWDCRA and the ELCRA includes the rental or lease of real property or an interest in real property. MCL 37.1501(d) and MCL 37.2501(b), respectively. *Real property* for purposes of both the PWDCRA and the ELCRA "includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate

[25]The Michigan Supreme Court vacated the Court of Appeals' judgment "to the extent that it can be read to stand for the proposition that expert-witness testimony must be provided in all cases in which a person is seeking a reasonable accommodation[.]" *Riverbrook v Fabode*, 510 Mich 1061, 1061 (2022).

cooperative or condominium." MCL 37.1501(e) and MCL 37.2501(a), respectively.

Conduct prohibited by the PWDCRA and the ELCRA includes in part:

- Any retaliation or discrimination against an individual due to the individual's opposition to a violation of the PWDCRA or the ELCRA, or because the individual made a complaint under the PWDCRA or the ELCRA. MCL 37.1602(a) and MCL 37.2701(a), respectively.

- Any direct or indirect attempt to violate the PWDCRA or the ELCRA. MCL 37.1602(c) and MCL 37.2701(c), respectively.

- Any interference with an individual's exercise or enjoyment of rights granted or protected under the PWDCRA or the ELCRA. MCL 37.1602(f) and MCL 37.2701(f), respectively.

Under ELCRA and the Landlord-Tenant Relationship Act (LTRA), MCL 554.601 *et seq*., a person that is a landlord and owns five or more rental units in Michigan (including all related entities to that person) is prohibited from discriminating against an individual "based on the source of income of an otherwise eligible prospective or current tenant[.]" MCL 37.2502(3)-(4); MCL 554.601c(1)-(2). Specifically, landlords who own five or more rental units cannot, based on the source of income of an otherwise eligible prospective or current tenant, do any of the following:

- "Deny or terminate a tenancy to the prospective or current tenant." MCL 37.2502(3)(a); MCL 554.601c(1)(a).

- "Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of a rental unit or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of the rental unit." MCL 37.2502(3)(b); MCL 554.601c(1)(b).

- "Otherwise make unavailable or deny any rental unit to the prospective or current tenant if the prospective or current tenant would be eligible to rent the rental unit but for the individual's source of income." MCL 37.2502(3)(c); MCL 554.601c(1)(c).

- "Represent to the prospective tenant that a rental unit is not available for inspection, rental, or lease when in fact it is so available, or knowingly fail to bring a rental

listing to the prospective tenant's attention, or refuse to permit the prospective tenant to inspect a rental unit." MCL 37.2502(3)(d); MCL 554.601c(1)(d).

- "Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of any rental unit on the basis of the prospective or current tenant's use of emergency rental assistance." MCL 37.2502(3)(e); MCL 554.601c(1)(e).

- "If the landlord requires a prospective or current tenant to have a certain threshold level of income, exclude any source of income in the form of a rent voucher or subsidy when calculating whether the income criteria have been met." MCL 37.2502(3)(f); MCL 554.601c(1)(f).[26]

- "Attempt to discourage the rental or lease of any rental unit to the prospective or current tenant." MCL 37.2502(3)(g); MCL 554.601c(1)(g).

- "Publish, circulate, display, or cause to be published, circulated, or displayed any communication, notice, advertisement, or sign of any kind relating to the rental or lease of any rental unit that indicates a preference, limitation, or requirement based on any source of income." MCL 37.2502(3)(h); MCL 554.601c(1)(h).

- "Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates [MCL 37.2502(3) or MCL 554.601c(1)]." MCL 37.2502(3)(i); MCL 554.601c(1)(i).

- "Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under [MCL 37.2502(3) or MCL 554.601c(1)]." MCL 37.2502(3)(j); MCL 554.601c(1)(j).

ELCRA specifies that these prohibitions do not apply to:

- buildings containing accommodations for not more than two families to live independently where the owner or a member of the owner's immediate family occupies one

[26] MCL 37.2502(3)(f) and MCL 554.601c(1)(f) do "not apply to emergency rental assistance." MCL 37.2502(3)(f); MCL 554.601c(1)(f).

part of the property, or room(s) in a single-family dwelling if the lessor or a member of the lessor's immediate family resides in the dwelling MCL 37.2503(1)(a); MCL 37.2502(5).

- dwellings for which the owner or lessor is leasing the home for not more than 12 months following the owner's immediate prior occupancy of the premises for at least three months, and the dwelling is maintained as the owner's or lessor's legal residence. MCL 37.2503(1)(b); MCL 37.2502(5).

- with respect to age and familial status, senior citizens housing accommodations, or accommodations otherwise intended for the purpose of housing persons 50 years of age or older. MCL 37.2503(1)(c); MCL 37.2502(5).

"A person alleging a violation of [MCL 554.601c] may bring a civil action for appropriate injunctive relief or damages, or both." MCL 554.601d(1). Under MCL 554.601d(1), "'damages' means actual damages for injury or loss caused by each violation of [MCL 554.601c], or up to 3 times the monthly rent for the rental unit or units at issue, whichever is less, together with court costs and reasonable attorney fees." MCL 554.601d(1). "An action commenced under [554.601d(1)] may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or where that person's principal place of business is located." MCL 554.601d(2).

Local civil rights ordinances in some jurisdictions may provide tenants with additional protections.

5.6 Termination Without Cause in Governmentally Subsidized Housing

A judgment for possession under the Summary Proceedings Act for an alleged termination of tenancy must not be entered against a tenant living in housing "operated by a city, village, township, or other unit of local government" if the termination of tenancy is without cause. MCL 600.5720(1)(d).[27]

[27] See also MCL 125.694a(1): "No tenancy or contract right to occupy housing in a project or facilities operated by any city, village, township or other unit of local government, as provided by [the Housing Facilities Act], shall be terminated by the project management or the local housing commission except for just cause."

A tenant in federally subsidized housing is also protected from the termination of tenancy without good or just cause.[28] See *Rudder v United States*, 226 F2d 51, 53 (DC Cir, 1955), where the Court stated:

> The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process.

See also 42 USC 1437f(d)(1)(B)(*ii*); *Thorpe v Housing Auth of the City of Durham*, 393 US 268, 282-283 (1969).

5.7 Termination Not Authorized by Lease

MCL 600.5714(1)(c)(*i*) allows a landlord to initiate summary proceedings to recover possession of premises "[w]hen a person holds over premises . . . [a]fter termination of the lease, pursuant to a power to terminate provided in the lease or implied by law." Therefore, to initiate summary proceedings for a breach of a lease, the lease itself must expressly provide for termination of the lease based on such a breach. See *Hersey Gravel Co v Crescent Gravel Co*, 261 Mich 488, 491 (1933); *United Coin Meter Co v Lasala*, 98 Mich App 238, 242 (1980). The lease should also specify the notice requirements for terminating a lease pursuant to a power to terminate. See generally, *Erickson v Bay City Glass Co*, 6 Mich App 260, 265 (1967). A 30-day notice is routinely applied to such terminations. No additional notice is required before the initiation of summary proceedings.

"Forfeitures are not favored, and generally equity will relieve against them." *Hersey Gravel Co*, 261 Mich at 492. "If there be any doubt about [interpreting the language in a lease,] such doubt must be resolved against the interest of the lessor." *Steinberg v Fine*, 225 Mich 281, 285 (1923). A tenant may defend against a landlord's action for possession by showing that no lease provision or implication of law authorized the termination of tenancy on which the summary proceedings are based.

A tenant may also defend against a landlord's action for possession on the basis that the landlord waived his or her right to claim a breach of the lease to justify termination of the tenancy. A tenant may show that the landlord, through his or her acts since learning of the tenant's breach, continued to operate under the lease and has, therefore, waived his or her right to terminate the lease on the basis of the breach. See e.g., *Struble v Community Club*, 218 Mich 604, 610-611 (1922) (landlord who had knowledge of an alleged "technical" breach and made no objection to it could not cite that breach to justify refusal to allow tenants to exercise an

[28] For a discussion of governmentally subsidized housing, see Chapter 3.

option to renew the lease); *Patterson v Carrel*, 171 Mich 296, 298 (1912) (accepting rent and allowing tenants to spend their own money to repair the premises are both acts waiving any past breach); *Park Forest of Blackman v Smith*, 112 Mich App 421, 428-429 (1982) (repeatedly accepting late rental payments waives the landlord's right to cite delinquent rent as grounds to terminate tenancy).

5.8 Invalidity of Mortgage Foreclosure

A tenant may challenge the validity of a sale following a mortgage foreclosure when summary proceedings for possession of the premises are based on the sale.[29] *Reid v Rylander*, 270 Mich 263, 267 (1935).

[29] See Chapter 7 for more information on challenging the validity of a foreclosure.

Chapter 6: Postjudgment Proceedings

6.1. Postjudgment Motions..... 6-2
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6.1 Postjudgment Motions

Except as provided in MCR 2.612 (motion for relief from judgment), any postjudgment motion must be filed not more than ten days after judgment is entered. MCR 4.201(N). A pleading or other document filed by an unrepresented individual who is incarcerated in prison or jail "must be deemed timely filed if it was deposited in the institution's outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid." MCR 1.112.

A. Motion for Relief from Judgment[1]

"The procedure for obtaining relief from a judgment shall be by motion as prescribed in [the Michigan Court Rules] or by an independent action. Relief may not be sought or obtained by the writs of coram vobis, audita querela, bills of review, or bills in the nature of a bill of review." MCR 2.612(C)(4).

Under MCR 2.612(C), "[o]n motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding" when the motion for relief from judgment is based on one of the grounds listed in the rule and when the motion is "made within a reasonable time[.]"

According to MCR 2.612(C)(2), a motion for relief from judgment on the following grounds must be made "within one year after the judgment, order, or proceeding was entered or taken":

- "Mistake, inadvertence, surprise, or excusable neglect." MCR 2.612(C)(1)(a).
- "Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B)."[2] MCR 2.612(C)(1)(b).
- "Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." MCR 2.612(C)(1)(c).

A motion for relief from judgment on the following grounds must be made "within a reasonable time":

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[1] This section contains a brief discussion of motions for relief from judgment under MCR 2.612. For more information, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 4.

[2] See Section 6.1(F) for information on motions for a new trial.

- "The judgment is void." MCR 2.612(C)(1)(d).
- "The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application." MCR 2.612(C)(1)(e).
- "Any other reason justifying relief from the operation of the judgment." MCR 2.612(C)(1)(f).

What constitutes a "reasonable time" is dependent on the circumstances of each case. See e.g., *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 246-247 (2004), where the Court concluded that under the circumstances of the case, a motion for relief under MCR 2.612(C)(1)(d) was filed "within a reasonable time" when it was filed more than one year after entry of the judgment because a motion under MCR 2.612(C)(1)(d) is not subject to the one-year requirement of MCR 2.612(C)(2).

Generally, a motion for relief from judgment under MCR 2.612(C) "does not affect the finality of a judgment or suspend its operation." MCR 2.612(C)(2). However, the court may grant a stay following a party's motion for relief from judgment. MCR 2.614(A)(1). MCR 2.614(A)(1) clarifies that "[e]xcept as provided in [MCR 2.614], execution may not issue on a judgment and proceedings may not be taken for its enforcement until 21 days after a final judgment (as defined in MCR 7.202(6)) is entered in the case." MCR 2.614(B) states that "[i]n [the court's] discretion and on proper conditions for the security of the adverse party, the court may stay the execution of, or proceedings to enforce, a judgment pending the disposition of a motion for relief from a judgment or order under MCR 2.612."

"If a circuit court order grants relief to a party as described under [MCL 600.309a(2)], an opposing party may file an appeal of right from that order to the court of appeals. Action in the circuit court must be stayed while the matter is on appeal." MCL 600.309a(3). In addition, the court[3] must "take appropriate steps toward ensuring, consistent with the appellate court rules, a timely processing of the appeal." MCL 600.309a(4). MCL 600.309a "applies only if a party seeks relief from a circuit court judgment entered in a civil action based on a jury verdict on any of the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence.

[3] It is unclear whether the Legislature is referring to the lower court or the Court of Appeals.

(c) Fraud, misrepresentation, or other misconduct of an adverse party.

(d) That the judgment is void.

(e) Another reason that justifies relief from the operation of the judgment." MCL 600.309a(2).

MCL 600.309a "does not apply to an action to which [MCL 600.6098] applies," and "applies only to an action, case, or proceeding commenced after" September 10, 2021. MCL 600.309a(5)-(6).

B. Motion to Set Aside a Default Judgment[4]

A default or default judgment may be set aside under MCR 2.603 or MCR 2.612.[5] MCR 2.603(D)(3). Except as otherwise provided in MCR 2.612,[6] a motion to set aside a default judgment must be made within ten days of the judgment's entry. MCR 4.201(N).

Except as otherwise provided in MCR 2.612,[7] if the party against whom the default was entered was personally served with notice of the action, the default or default judgment may be set aside under MCR 2.603 only if the motion is filed:

- "before entry of a default judgment," MCR 2.603(D)(2)(a), or
- "if a default judgment has been entered, within 21 days[8] after the default judgment was entered[,]" MCR 2.603(D)(2)(b).

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[4] This section contains a brief discussion of motions to set aside a default judgment under MCR 2.603. For more information, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 4.

[5] See Section 4.12 for information on defaults and default judgments. See Section 2.7(E) for information on default judgments under the Servicemembers Civil Relief Act. See Section 6.1(A) for information on motions for relief from judgment under MCR 2.612.

[6] A motion under MCR 2.612 for relief from judgment must be filed "within a reasonable time[.]" MCR 2.612(C)(2). See also MCR 2.612(B).

[7] See MCR 2.612(B), which permits the court to order relief from judgment for "[a] defendant over whom personal jurisdiction was necessary and acquired, but who did not in fact have knowledge of the pendency of the action, [who] enter[ed] an appearance within 1 year after final judgment" and who "shows reason justifying relief from the judgment and innocent third persons will not be prejudiced[.]" See also MCR 2.612(C)(2), which requires a motion under MCR 2.612 for relief from judgment to be filed "within a reasonable time[.]"

[8] MCR 2.603(D)(2)(b) states that a motion to set aside a default judgment must be made not more than 21 days after the judgment was entered. However, with the exception of MCR 2.612, MCR 4.201(N) requires that any postjudgment motion be made within ten days after entry of judgment. Because MCR 4.201(N) makes no exception for the time allowances of MCR 2.603, and because MCR 4.201(N) is the more specific court rule and expressly applies to postjudgment motions following summary proceedings, the ten-day limit in MCR 4.201(N) applies to a motion to set aside a default judgment entered in summary proceedings.

Unless the motion is "grounded on lack of jurisdiction over the defendant," a party must show good cause and file "a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3)," before a default judgment may be set aside. MCR 2.603(D)(1). See also MCR 4.201(N)(3) (requiring a showing of a meritorious defense and good cause before a court may grant a motion to set aside a default *money* judgment, except when grounded on a lack of jurisdiction). Good cause sufficient to set aside a default means: "(1) a substantial irregularity or defect in the proceeding upon which the default is based, [or] (2) a reasonable excuse for failure to comply with the requirements that created the default." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233 (1999).

"An order setting aside the default or default judgment must be conditioned on the defaulted party paying the taxable costs incurred by the other party in reliance on the default or default judgment, except as prescribed in MCR 2.625(D).[9] The order may also impose other conditions the court deems proper, including a reasonable attorney fee." MCR 2.603(D)(4).

"[A] default is merely an admission of liability and not an admission regarding the proper amount of damages." *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 554 (2015). Thus, "[i]f the amount of damages is in dispute, a defaulting defendant is nonetheless entitled to a hearing, at which [the defendant] may challenge the plaintiff's alleged damages amount, if the trial court determines that a hearing is necessary." *Id.* at 555.

C. Motion to Set Aside a Consent Judgment or Order

If a party was not represented by an attorney at the time a consent judgment or order was entered, he or she may move, within three regular court days of the date the judgment or order was entered, to set aside the consent judgment or order.[10] MCR 4.201(J)(2). A timely motion to set aside a consent judgment or order "stays the judgment or order until the court decides the motion or dismisses it after notice to the moving party." *Id*.

The court must set aside a consent judgment or order if the court is satisfied that the moving party "misunderstood the basis for, or the rights which were being relinquished in, the judgment or order." MCR 4.201(J)(3).

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[9]The amount of taxable costs depends on whether and how personal jurisdiction over the defendant was obtained. See MCR 2.625(D).

[10]Enforcement of a consent order is delayed for three business days. MCR 4.201(J)(1).

D. Motion to Amend the Findings

A party may make a motion for the court to "amend its findings or make additional findings," and the court "may amend the judgment accordingly."[11] MCR 2.517(B). A motion to amend the court's findings "may be made with a motion for new trial pursuant to MCR 2.611."[12] MCR 2.517(B). Whenever a court makes findings following a bench trial, a party may question the sufficiency of the evidence without regard to whether that party "objected to the findings or [] moved to amend them or for judgment." *Id*.

A motion to amend the court's findings must be made not more than ten days following the entry of judgment. MCR 4.201(N).[13]

E. Motion for Judgment Notwithstanding the Verdict[14]

A motion "to have the verdict and judgment set aside, and to have judgment entered in the moving party's favor" may be "joined with a motion for a new trial, or a new trial may be requested in the alternative." MCR 2.610(A)(1). Additionally, "[a] motion to set aside or otherwise nullify a verdict or a motion for a new trial is deemed to include a motion for judgment notwithstanding the verdict as an alternative." MCR 2.610(A)(3).

A motion for judgment notwithstanding the verdict must be made within ten days of the entry of judgment. MCR 4.201(N).[15]

- "If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as requested in the motion." MCR 2.610(B)(1).

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[11] See Section 4.10(F) for more information on a court's findings and conclusions.

[12] See Section 6.1(F) for information on motions for a new trial.

[13] MCR 2.517(B) states that a motion to amend the court's findings must be made not more than 21 days after the judgment was entered. However, with the exception of MCR 2.612, MCR 4.201(N) requires that any postjudgment motion be made within ten days after entry of judgment. Because MCR 4.201(N) is the more specific rule and makes no exception for the time allowances of MCR 2.517, and because MCR 4.201(N) expressly applies to postjudgment motions following summary proceedings, the ten-day limit in MCR 4.201(N) applies to a motion to amend a court's findings filed after judgment in summary proceedings.

[14] This section contains a brief discussion of motions for judgment notwithstanding the verdict under MCR 2.610. For more information, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8.

[15] MCR 2.610(A)(1) states that a motion for judgment notwithstanding the verdict must be made not more than 21 days after the judgment was entered. However, with the exception of MCR 2.612, MCR 4.201(N) requires that any postjudgment motion be made within ten days after entry of judgment. Because MCR 4.201(N) makes no exception for the time allowances of MCR 2.610, and because MCR 4.201(N) expressly applies to postjudgment motions following summary proceedings, the ten-day limit in MCR 4.201(N) applies to a motion for judgment notwithstanding the verdict filed after judgment in summary proceedings.

- "If a verdict was not returned, the court may direct the entry of judgment as requested in the motion or order a new trial." MCR 2.610(B)(2).

In ruling on a motion for judgment notwithstanding the verdict, "the court must give a concise statement of the reasons for the ruling, either in a signed order or opinion filed in the action, or on the record." MCR 2.610(B)(3).

If the court grants a party's motion for judgment notwithstanding the verdict, the court must "also conditionally rule on any motion for a new trial, determining whether it should be granted if the judgment is vacated or reversed[.]" MCR 2.610(C)(1). The court must "specify the grounds for granting or denying the motion for a new trial." *Id*.

"The party whose verdict [was] set aside on a motion for judgment notwithstanding the verdict may serve and file a motion for a new trial pursuant to MCR 2.611 within 14 days after entry of judgment." MCR 2.610(D).

Committee Tip:

MCR 4.201(N)'s ten-day limit on postjudgment motions (rather than the 14-day limit in MCR 2.610(D)) may apply to a party's motion for a new trial following a judgment notwithstanding the verdict. The court rules expressly applicable to summary proceedings do not distinguish between an initial postjudgment motion and a postjudgment motion brought in response to a court's ruling on the initial postjudgment motion.

"A party who fails to move for a new trial as provided in this subrule has waived the right to move for a new trial." MCR 2.610(D).

F. Motion for New Trial or to Amend Judgment[16]

A motion for a new trial or a motion to amend the judgment must be made within ten days of the judgment's entry.[17] MCR 4.201(N). "[A] motion for a new trial is deemed to include a motion for judgment notwithstanding the verdict as an alternative." MCR 2.610(A)(3).

[16] This section contains a brief discussion of motions for new trial or to amend the judgment under MCR 2.611. For more information, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8.

The court may grant a new trial "to all or some of the parties, on all or some of the issues, whenever [the parties'] substantial rights are materially affected, for any of the following reasons:"

- "Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial." MCR 2.611(A)(1)(a).
- "Misconduct of the jury or of the prevailing party." MCR 2.611(A)(1)(b).
- "Excessive or inadequate damages appearing to have been influenced by passion or prejudice."[18] MCR 2.611(A)(1)(c).
- "A verdict clearly or grossly inadequate or excessive."[19] MCR 2.611(A)(1)(d).
- "A verdict or decision against the great weight of the evidence or contrary to law." MCR 2.611(A)(1)(e).
- "Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial." MCR 2.611(A)(1)(f).
- "Error of law occurring in the proceedings, or mistake of fact by the court." MCR 2.611(A)(1)(g).
- "A ground listed in MCR 2.612 warranting a new trial."[20] MCR 2.611(A)(1)(h).

"[T]he court on its own initiative may order a new trial for a reason for which it might have granted a new trial on motion of a party." MCR 2.611(C). The court must specify on what grounds its order for a new trial is based. *Id*.

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[17] MCR 2.611(B) states that a motion for new trial or a motion to amend judgment must be made not more than 21 days after the judgment was entered. However, with the exception of MCR 2.612, MCR 4.201(N) requires that any postjudgment motion be made within ten days after entry of judgment. Because MCR 4.201(N) is the more specific rule and makes no exception for the time allowances of MCR 2.611, and because MCR 4.201(N) expressly applies to postjudgment motions following summary proceedings, the ten-day limit in MCR 4.201(N) applies to a motion for new trial or a motion to amend judgment filed after judgment in summary proceedings.

[18] See MCR 2.611(E) for information on remittitur and additur. See also the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8, for more information.

[19] See MCR 2.611(E) for information on remittitur and additur. See also the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8, for more information.

[20] Grounds in MCR 2.612 for relief from judgment are, summarily: (1) mistake; (2) newly discovered evidence; (3) fraud; (4) judgment is void; (5) judgment is no longer valid; and (6) any other reason justifying relief. MCR 2.612(C)(1)(a)-(f). See Section 6.1(A).

G. Stays of Proceedings

1. After Judgment of Possession Issued

Except as otherwise provided in MCR 4.201(N), if a postjudgment motion challenges a possession judgment, a court may not grant a stay of the proceedings. MCR 4.201(N)(1). However, a court must grant a stay if one of the following circumstances apply:

- An escrow deposit of one month's rent accompanies the postjudgment motion. MCR 4.201(N)(1)(a).
- "[T]he court is satisfied that there are grounds for relief under MCR 2.612(C),[21] and issues an order that waives payment of the escrow; such an order may be ex parte." MCR 4.201(N)(1)(b).

If the court stays the proceedings, a hearing must be held within 14 days after the stay is granted. MCR 4.201(N)(1).

If a party files an appeal or a motion for a new trial before expiration of the time during which an order of eviction (writ of restitution) must not issue[22] (ten days after entry of a possession judgment, MCL 600.5744(5)), the party may file a bond to stay the proceedings. MCL 600.5744(6). If proceedings are stayed under these conditions, "the period during which the writ must not be issued is tolled until the disposition of the appeal or motion for new trial is final." *Id*.

2. No Judgment of Possession Issued

A postjudgment motion stays the proceedings when "the judgment does not include an award of possession." MCR 4.201(N)(2). However, a plaintiff may request an order requiring the defendant to post a bond to secure the stay. *Id*. The plaintiff may request that the defendant make "continuing adequate escrow payments" pursuant to MCR 4.201(I)(2),[23] if the plaintiff believes the initial escrow deposit is inadequate. MCR 4.201(N)(2). "The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including an order of eviction issued but not executed." *Id*.

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[21] Grounds in MCR 2.612 for relief from judgment are, summarily: (1) mistake; (2) newly discovered evidence; (3) fraud; (4) judgment is void; (5) judgment is no longer valid; and (6) any other reason justifying relief. MCR 2.612(C)(1)(a)-(f). See Section 6.1(A).

[22] See Section 4.14 for information on orders of eviction.

[23] See Section 4.9(B) for more information on escrow orders.

6.2 Appeals

"Any party aggrieved by the determination or judgment of the court under [the Summary Proceedings Act] may appeal to the circuit court of the same county. The appeal shall be made in the same manner as an appeal in other civil actions from the same court, with bond and procedure as provided by court rules."[24] MCL 600.5753. Unless otherwise provided by MCR 4.201(O), appeals from summary proceedings "must comply with MCR 7.101 through [MCR] 7.115." MCR 4.201(O)(1).

See the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2, for more information on appeals of summary proceedings.

[24]See the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2, for detailed information on the circuit court appeals process.

Chapter 7: Home Ownership Issues—Mortgages and Land Contracts[1]

7.1. Forfeiture of Land Contracts 7-2

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[1]This chapter contains information regarding mortgage foreclosures and land contract foreclosures and forfeitures. The information is included in the benchbook because challenges to the propriety of foreclosures and forfeitures may arise during summary proceedings for possession of property subject to mortgages or land contracts. See e.g., 10A Michigan Pleading & Practice (2d ed), § 74:148: "A mortgagor may hold over after foreclosure by advertisement and may test the validity of the foreclosure sale as a defense to a summary proceeding to recover possession of the property." See also 10A Michigan Pleading & Practice (2d ed), § 74:30: "A district court has jurisdiction to hear and determine equitable claims and defenses raised by a mortgagor in a summary proceeding to recover possession of the mortgaged property following foreclosure by advertisement." See also *Mfrs Hanover Mtg Corp v Snell*, 142 Mich App 548, 554 (1985).

7.1 Forfeiture of Land Contracts

"When a vendee purchases property under a land contract, the vendee becomes, in a real sense, the owner of that property." *Batton-Jajuga v Farm Bureau Gen Ins Co of Mich*, 322 Mich App 422, 438 (2017). "While the vendee may not immediately acquire full title in the property, the vendee does acquire equitable title and the remaining legal title is simply held in trust by the vendor." *Id.* at 438.

If the terms of a land contract expressly provide for termination or forfeiture of the contract following nonpayment of moneys due or any other material breach of the contract, summary proceedings under MCL 600.5726 may be appropriate. Default alone is not forfeiture; notice of intent to forfeit is necessary. *Sparling v Bert*, 1 Mich App 167, 171 (1965).

Purchasers of real property by land contract "generally do not willingly surrender possession or forfeit their equity[,]" and most sellers of real property by land contract seek payment not possession. *Gruskin v Fisher*, 405 Mich 51, 63 (1979). If a vendee does agree to forfeit his or her equity and return possession of the property to the vendor in response to a vendor's notice of forfeiture, "[the vendor] is then required to decide whether to accept possession or to seek a deficiency judgment." *Id*. at 59-60, 64.

Unless the parties have a written agreement for a longer time, a vendee or person holding possession under him or her has 15 days from the date he or she was served with a notice of forfeiture to pay the moneys required under the contract and to cure any material breaches, or to surrender possession of the property. MCL 600.5728(1).

Under MCL 600.5728(2), a notice of forfeiture must:

- state the names of the contracting parties,
- state the date the contract was executed,
- provide the address of the premises (or a legal description),
- specify the amount of money required to be paid under the contract that remains unpaid,
- specify the dates on which the unpaid payments were due,
- indicate whether any other material breaches of the contract occurred, and

- declare the contract forfeited no less than 15 after the notice was served, unless the amount of money owed is paid and any other material breaches are cured within that time.

The person entitled to possession of the premises, or his or her attorney or agent, must sign and date the notice of forfeiture. MCL 600.5728(2).

According to MCL 600.5730, the notice of forfeiture may be served on the vendee or the person in possession of the premises under the vendee by any of the following methods:

- personal delivery,
- delivery on the premises "to a member of [the vendee's] family or household or an employee, of suitable age and discretion, with a request that it be delivered to the vendee or person holding possession under him," or
- first-class mail addressed to the vendee's last known address (or the last known address of the person holding possession under the vendee).

If service is made by first-class mail, the date of service "is the next regular day for delivery of mail after the day when it was mailed." MCL 600.5730.

If notice of forfeiture cannot be served by personal delivery, delivery on the premises, or first-class mail, MCL 600.5730 allows for service by publication subject to MCL 554.301 and MCL 554.302. Service by publication of the notice of forfeiture is appropriate when the vendee or other person entitled to notice is absent from Michigan or cannot be located in Michigan, or when the person's whereabouts "cannot be determined after diligent search and inquiry[.]" MCL 554.301. Service by publication requires that the notice be published at weekly intervals on three successive occasions in a newspaper published and circulating in the county where the property is located. *Id*. If there is no newspaper in the county, publication should be made "in some newspaper published in an adjoining county and circulating in the county where such property is situated." *Id*.

When service is made by publication, the date of service is the date of the third publication. MCL 600.5730. Proof of service by publication "may be shown by the introduction of due proof of such publication[.]" MCL 554.302. The court may require further proof showing that service by publication was justified by the circumstances existing at the time. *Id*.

"[A]ccepting partial payments after service of the notice of intention to declare a forfeiture and before the time allowed in the notice to cure the

delinquency had expired . . . cannot constitute a waiver by the vendor of his right to declare a forfeiture. Indeed, the vendor is obligated to accept payments toward the balance due until the grace period set out in the notice of intention runs out." *Reinecke v Sheehy*, 47 Mich App 250, 257 (1973).

7.2 Summary Proceedings to Recover Possession of Property Held Pursuant to a Forfeited Land Contract

MCR 4.202 applies specifically to summary proceedings involving land contracts. Unless otherwise provided by MCR 4.202 or the Summary Proceedings Act, the Michigan Court Rules govern "a summary proceeding to recover possession of premises after forfeiture of an executory contract for the purchase of premises as described in MCL 600.5726[.]"[2] MCR 4.202(A).[3]

MCL 600.5726 states:

> A person entitled to any premises may recover possession thereof by a proceeding under [the Summary Proceedings Act] after forfeiture of an executory contract for the purchase of the premises but only if the terms of the contract expressly provide for termination or forfeiture, or give the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract. For purposes of this chapter, moneys required to be paid under the contract shall not include any accelerated indebtedness by reason of breach of the contract.

"Forfeiture of the contract is a prerequisite to commencement of summary proceedings for possession of the premises. Thus, a seller wishing to avail himself of the remedy of summary proceedings must first send notice of forfeiture." *Gruskin v Fisher*, 405 Mich 51, 59 (1979). Proof of a valid forfeiture is essential to the vendor's case in summary proceedings. *Burke v Henry*, 261 Mich 74, 75 (1932). MCL 600.5728(1) expressly states that "[p]ossession may be recovered . . . only after the vendee or person holding possession under him has been served with a written notice of forfeiture and has failed in the required time to pay

[2] MCL 600.5726 authorizes the initiation of summary proceedings to recover possession of property after breach of a land contract as long as "the terms of the contract expressly provide for termination or forfeiture, or give the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract."

[3] The rules specific to summary proceedings in cases involving land contracts are less detailed than those rules expressly applicable to summary proceedings involving leased premises. Compare MCR 4.201 and MCR 4.202. See also Chapter 4.

moneys required to be paid under the contract or to cure any other material breach of the contract."

A vendor who sends a vendee a notice of forfeiture has not irrevocably elected the remedy of possession. *Gruskin*, 405 Mich at 59. Rather, a vendor who sends a notice of forfeiture may still bring "an action to foreclose with a view to obtaining a deficiency judgment[,]" as long as the vendor has not been awarded possession of the property after summary proceedings. *Id*.

A pleading or other document filed by an unrepresented individual who is incarcerated in prison or jail "must be deemed timely filed if it was deposited in the institution's outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid." MCR 1.112.

A. Initiating Summary Proceedings

A vendor may initiate summary proceedings to recover possession of property held under a land contract "when the premises are vacant or are in the possession of . . . the vendee, . . . a party to the contract, . . . an assignee of the contract, or . . . a third party." MCR 4.202(B)(1)(a)-(d). "The court may do all things necessary to hear and resolve the proceeding, including but not limited to":

- "hearing and deciding all issues," MCR 4.202(B)(2)(a);
- "ordering joinder of additional parties," MCR 4.202(B)(2)(b);
- "ordering or permitting amendments or additional pleadings," MCR 4.202(B)(2)(c); and
- "making and enforcing writs and orders[,]" MCR 4.202(B)(2)(d).

"All executory contract summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a [certified] reporter or recorder . . . may file a transcript of the record in a Michigan court."[4] MCR 4.202(G).

[4] See MCR 8.108(G) for Michigan's certification requirements.

B. Parties Involved

The parties that must be joined as defendants in a summary proceeding for the possession of property held under a land contract are "the vendee named in the contract, . . . any person known to the [vendor] to be claiming an interest in the premises under the contract, and . . . any person in possession of the premises, unless that party has been released from liability." MCR 4.202(C)(1)-(3).

C. Summons and Complaint

The complaint initiating summary proceedings in land contract cases must:

- "comply with the general pleading requirements[,]" MCR 4.202(D)(1);
- "allege . . . the original selling price, . . . the principal balance due, and . . . the amount in arrears under the contract[,]" MCR 4.202(D)(2)(a)-(c);
- "state with particularity any other material breach claimed as a basis for forfeiture[,]" MCR 4.202(D)(3); and
- "have attached to it a copy of the notice of forfeiture, showing when and how it was served on each named defendant[,]" MCR 4.202(D)(4).

The summons must be in compliance with the requirements of MCR 2.102(A)-(C)[5] (issuance, form, and amendment of summons) and MCL 600.5735 (time of appearance). MCR 4.202(E). The summons must "command the defendant to appear and answer or take other action permitted by law within the time permitted by statute after service of the summons on the defendant." *Id*.

MCL 600.5735(2)(a) requires a summons in land contract forfeitures to command the defendant to appear for trial within 30 days of the date the summons was issued; the summons must be served not less than ten days before the trial date.[6] The summons and complaint must be served on the defendant as specified in MCR 2.105 (by personal delivery to the defendant or "by registered or certified mail, return receipt requested, and delivery restricted to the addressee").[7]

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[5] MCR 2.102(G) expressly states that MCR 2.102(D)-(F) do not apply to proceedings governed by the Summary Proceedings Act and by subchapter 4.200 of the Michigan Court Rules.

[6] Local court rules may require a shorter period of time. See MCL 600.5735(4)(a).

[7] See MCR 2.105(B)(1) for the required methods of serving a nonresident defendant.

D. Answer

"[A vendee's] answer must comply with general pleading requirements and allege those matters on which the [vendee] intends to rely to defeat the claim or any part of it." MCR 4.202(H)(1).

E. Default

If the defendant fails to appear, the plaintiff may motion for entry of a default against the defendant, the court may grant the default, and the court "may hear the plaintiff's proofs in support of judgment." MCR 4.202(H)(2)(a). The court must enter a default judgment under MCL 600.5741, and in compliance with MCR 4.202(J) (judgment), if the plaintiff's proofs satisfy the court as to the complaint's accuracy. MCR 4.202(H)(2)(a). The court clerk must mail to the defendant a copy of the default judgment. *Id*. If applicable, the judgment must inform the defendant that:

- "he or she may be evicted from the premises," MCR 4.202(H)(2)(a)(*i*);
- "he or she may be liable for a money judgment," MCR 4.202(H)(2)(a)(*ii*).

If the plaintiff fails to appear, the court may enter a default and a judgment for the defendant's costs pursuant to MCL 600.5747. MCR 4.202(H)(2)(b).

"If [either] party fails to appear, the court may adjourn the hearing for up to 7 days. If the hearing is adjourned, the court must mail notice of the new date to the party who failed to appear." MCR 4.202(H)(2)(c).

"For any hearing held under [MCR 4.202], in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant[.]" MCR 4.202(H)(3).

F. Claims and Counterclaims

Joinder of claims and counterclaims for money judgments (as described in MCL 600.5739[8]) or for equitable relief is permitted. MCR 4.202(I)(1). "A money claim must be separately stated in [a] complaint[, and a] money counterclaim must be labeled and separately stated in a written answer." *Id*. "If such a joinder is made, the court may order separate summary disposition of the claim for

[8] MCL 600.5739(1) states, in relevant part: "Except as provided by court rules, a party to summary proceedings may join claims and counterclaims for money judgment for damages attributable to wrongful entry, detainer, or possession, for breach of the lease or contract under which the premises were held, or for waste or malicious destruction to the premises."

possession, as described by MCL 600.5739."[9] MCR 4.202(I)(1). "A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to [MCR 4.202(I)(3) (when adjudication of money claim will affect amount owed by the defendant to prevent eviction)]." MCR 4.202(I)(2).

If the amount of money a defendant must pay to avoid an order of eviction will be affected by the disposition of a money counterclaim and the money counterclaim appears to have merit, the court must try the money counterclaim at the same time as the possession claim, notwithstanding the requirements of MCR 4.202(I)(1) and MCR 4.202(I)(2). MCR 4.202(I)(3).

"[I]f [a] money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit," the court may, on its own motion or the motion of either party, remove that part of the case to the circuit court in accordance with the procedures set forth in MCR 4.002. MCR 4.202(I)(4).

G. Judgment

A judgment in summary proceedings to recover possession of land subject to a land contract must:

- comply with MCL 600.5741 (judgment for possession), MCR 4.202(J)(1);
- state when an order of eviction will be issued, and any conditions under which it will be issued, MCR 4.202(J)(2);
- inform the parties that they have ten days in which to challenge the judgment by appeal or postjudgment motion,[10] MCR 4.202(J)(3); and
- be mailed or delivered to the parties by the court; "[t]he time period for applying for the writ of restitution [order of eviction] does not begin to run until the judgment is mailed or delivered." MCR 4.202(J)(5).

[9] According to MCL 600.5739(1), "[t]he court may order separate summary disposition of the claim for possession, without prejudice to any other claims or counterclaims. A claim or counterclaim for money judgment shall not exceed the amount in controversy that otherwise limits the jurisdiction of the court." The amount in controversy in district court must not exceed $25,000. MCL 600.8301(1).

[10] See Chapter 6 for information on postjudgment proceedings and appeals.

In addition, a judgment "may contain such other terms and conditions as the nature of the action and the rights of the parties require." MCR 4.202(J)(4).

MCL 600.5741 states that a judgment for possession in the plaintiff's favor may be enforced by an order of eviction. If, however, the judgment for possession is based on "the nonpayment of moneys required to be paid under an executory contract for purchase of the premises," the finder of fact must determine, and state in the possession judgment, the amount owed to the vendor at the time of trial. *Id*. This amount, the redemption amount, is stated in the possession judgment "only for the purpose of prescribing the amount which, together with taxed costs,[11] shall be paid to preclude issuance of the writ of restitution." *Id*.

See also *Wilson v Taylor*, 457 Mich 232, 236, 244-245 (1998), where the Court stated that a trial court's language in the "further orders" paragraph of a judgment—"all monies paid during [the] redemption period shall first be applied to keep payments current and then to the outstanding judgment amount"—was contrary to MCL 600.5741. That is, MCL 600.5741 requires only that a defendant pay, during the redemption period, the amount due at the time of judgment, plus taxed costs, in order to avoid an order of eviction. In addition, the *Wilson* Court stated that MCL 600.5744(7)[12] clearly separates monetary breaches from nonmonetary breaches; consequently, a defendant's failure to make current payments during the redemption period did not constitute an "other material breach" and so did not justify issuance of an order of eviction. *Wilson*, 457 Mich at 245-246.

The length of the redemption period depends on how much of the purchase price of the property has been paid under the land contract. If less than 50 percent of the purchase price has been paid, a defendant has 90 days from the possession judgment's entry in which to tender the amount owed together with taxed costs to prevent the court from issuing an order of eviction. MCL 600.5744(4). If more than 50 percent of the purchase price has been paid, a defendant has a six-month redemption period within which he or she must pay the vendor the amount owed plus taxed costs to avoid an order of eviction. *Id*. "[F]or purposes of establishing the proper redemption period . . . , the term 'purchase price' means the original selling price for the property as set forth on the face of the parties' land contract." *Entingh v Grooters*, 236 Mich App 458, 461-462 (1999). *Purchase price* does not include unpaid taxes or insurance premiums. *Id*. at 462.

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[11] An award of costs stated in the judgment may be enforced "in the same manner as other civil judgments for money in the same court." MCL 600.5741.

[12] Formerly MCL 600.5744(6). See 2019 PA 2, effective July 2, 2019.

H. Order of Eviction (Writ of Restitution)

A court must not issue an order of eviction (writ of restitution) if a defendant, within the time provided, pays to the vendor the amount stated in the judgment together with taxed costs, and if the defendant cures any other material breaches of the executory contract under which the land was being purchased. MCL 600.5744(7).

If the defendant does not pay the amount due under the judgment together with taxed costs within the time stated in the judgment, the plaintiff may apply to the court for an order of eviction. MCR 4.202(K)(1). The application for the order of eviction must:

- "be written," MCR 4.202(K)(1)(a);
- "be verified by a person having knowledge of the facts stated," MCR 4.202(K)(1)(b);
- "if any money due under the judgment has been paid, show the conditions under which it was accepted," MCR 4.202(K)(1)(c); and
- "state whether the party awarded judgment has complied with its terms," MCR 4.202(K)(1)(d).

An order of eviction may not be issued if the defendant has paid any of the amount due under the judgment unless the defendant was given notice of, and the opportunity to appear at, a hearing held on the matter. MCR 4.202(K)(2).

"Issuance of a writ of restitution following entry of a judgment for possession because of the forfeiture of an executory contract for the purchase of the premises forecloses any equitable right of redemption that the purchaser has or could claim in the premises." MCL 600.5744(8).

A judgment for possession following the forfeiture of a land contract merges and bars any claim the vendor might have had for money payments due or in arrears at the time of trial. MCL 600.5750. Whenever an order of eviction is issued after entry of a possession judgment following forfeiture, any claim for money payments that would have become due after the order of eviction was issued are also barred. *Id*. However, a plaintiff obtaining a possession judgment against a land contract defendant can bring a civil action against the defendant for any damage done to the property after the defendant received the notice of forfeiture. *Id*. In addition, if a defendant fails to comply with an order of eviction, the vendor may bring an action against the defendant for the reasonable rental value of the property for the period of time after the date on which the defendant should have vacated the property until the date on which the defendant

actually vacates the property. *Durda v Chembar Dev Corp*, 95 Mich App 706, 715 (1980) ("where a defaulting land contract vendee remains in possession of the property and does not redeem, he is liable for the reasonable rental value from the date the period for cure expired until he vacates the property").

I. Appeals

"Except as provided by this rule or by law, the rules applicable to other appeals to circuit court[13] . . . apply to appeals from judgments in land contract forfeiture cases."[14] MCR 4.202(L). "However, in such cases the time limit for filing a claim of appeal under MCR 7.104(A) is 10 days."[15] MCR 4.202(L).

7.3 Mortgage Foreclosures by Advertisement[16]

A *power of sale* is a clause written into a mortgage that authorizes the mortgagee (lender) to foreclose on the mortgage without court involvement in the case of nonpayment of the debt or other sufficient default by the mortgagor (buyer). See Black's Law Dictionary (9th ed). The mortgagee forecloses by advertising its intentions to foreclose and then having the property sold at a public sale for the outstanding debt. See MCL 600.3201. A *power of sale* is strictly a contractual arrangement and will not be implied by law; "[a] foreclosure of a mortgage by advertisement is valid only where the mortgage contains a power of sale[.]" *Bradway v Miller*, 200 Mich 648, 656 (1918). See also *Stewart v Eaton*, 287 Mich 466, 481 (1939).

A power-of-sale clause is invalid unless it complies with the statutory notice requirements in MCL 600.3208 and MCL 600.3212. See MCL 600.3201; *Gehrke v Janowitz*, 55 Mich App 643, 646-647 (1974). MCL 600.3201 states that a mortgage with a power of sale may be foreclosed by advertisement when there has been a default in any of the mortgage's conditions.[17] However, "[s]tatutory foreclosures are a matter of contract, authorized by the mortgagor, and ought not to be hampered by an

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[13] See MCR 7.101–MCR 7.115. See also the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2, for more information on circuit court appeals.

[14] See Chapter 6 for information on appeals.

[15] Ordinarily, the time under MCR 7.104(A) for filing an appeal is 21 days.

[16] Effective June 19, 2014, 2014 PA 125 amended MCL 600.3204 to remove the prohibition against foreclosure by advertisement when the property is claimed as a tax-exempt principal residence and certain other conditions exist.

[17] The power-of-sale provisions in MCL 600.3201 *et seq*., "[do] not apply to mortgages of real estate held by the Michigan state housing development authority [MSHDA]." MCL 600.3201. See MCL 125.1449–MCL 125.1449v for the statutory provisions applicable to power-of-sale foreclosures of property held by MSHDA.

unreasonably strict construction of the law." *White v Burkhardt*, 338 Mich 235, 239 (1953).

A. Conditions Precedent to Foreclosure[18]

Foreclosures by advertisement pursuant to a power of sale are regulated by MCL 600.3201 *et seq*. For a mortgagee to initiate a foreclosure, four conditions must be met. MCL 600.3204.

- First, the mortgagor must have defaulted on a condition of the mortgage, and the default must have triggered the power of sale. MCL 600.3204(1)(a).

- Second, there may not be a suit already instituted to recover the outstanding debt. MCL 600.3204(1)(b). However, if a prior suit on the outstanding debt was initiated but has been discontinued, or if an execution on a judgment obtained on the debt was returned unsatisfied, foreclosure by advertisement on the balance due is permitted. *Id*.

  - **Note:** An action or proceeding "for the appointment of a receiver" *or* "to enforce an assignment of rents" "under the Michigan uniform assignment of rents act" is *not* "an action or proceeding to recover the debt[.]" MCL 600.3204(1)(b).

- Third, the mortgage with the power of sale was duly recorded. MCL 600.3204(1)(c).

- Fourth, the party initiating the foreclosure must be "either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage." MCL 600.3204(1)(d).

"If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first must be treated as a separate and independent mortgage[, and t]he mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment." MCL 600.3204(2).

B. Notice

If the four prerequisite conditions for initiating foreclosure by advertisement are met, the mortgagee must publish in an appropriate

[18] For a general overview of the foreclosure process, see the Michigan State Housing Development Authority's (MSHDA) *Understanding Michigan's Foreclosure Timeline.* The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

newspaper and post on the premises notice of its intention to foreclose. MCL 600.3208. The notice must contain all of the following:

> (a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.
>
> (b) The date of the mortgage and the date the mortgage was recorded.
>
> (c) The amount claimed to be due on the mortgage on the date of the notice.
>
> (d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.
>
> (e) A description of the property by giving its street address, if any. The validity of the notice and the validity of any eventual sale under this chapter are not affected by the fact that the street address in the notice is erroneous or that the street address is omitted.
>
> (f) For a mortgage executed after December 31, 1964, the length of the redemption period as determined under [MCL 600.3240[19]].
>
> (g) A statement that if the property is sold at a foreclosure sale . . . , under [MCL 600.3278] the borrower will be held responsible to the person who buys the property at the mortgage foreclosure sale or to the mortgage holder for damaging the property during the redemption period.
>
> (h) The name, address, and telephone number of the attorney for the party foreclosing the mortgage.
>
> (i) For a residential mortgage, a statement in the following form: 'Attention homeowner: If you are a military service member on active duty, if your period of active duty has concluded less than 90 days ago, or if you have been ordered to active duty, please contact the attorney for the party foreclosing the mortgage at the telephone number stated in this notice.'
>
> (j) A statement in the following form: 'Notice of foreclosure by advertisement. Notice is given under section 3212 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3212, that the following mortgage will

[19] MCL 600.3240 specifies the length of redemption periods for different types of property.

be foreclosed by a sale of the mortgaged premises, or some part of them, at a public auction sale to the highest bidder for cash or cashier's check at the place of holding the circuit court in _____ County, starting promptly at (time), on (date). The amount due on the mortgage may be greater on the day of the sale. Placing the highest bid at the sale does not automatically entitle the purchaser to free and clear ownership of the property. A potential purchaser is encouraged to contact the county register of deeds office or a title insurance company, either of which may charge a fee for this information.' [MCL 600.3212(1). See also MCL 600.3238; MCL 600.3278.]

Committee Tip:

Although the applicable statutes, MCL 600.3208 and MCL 600.3212, do not expressly specify it, the date, time, and place of the foreclosure sale should be included in the notice.

Notice of the foreclosure must appear in a newspaper published in the same county where the mortgaged property is located, or if no newspaper is published in that county, in a newspaper published in an adjacent county. MCL 600.3208. However, the notice must not be published in a newspaper in which the foreclosing party, or its agent, has a majority ownership interest. MCL 600.3212(2). The notice must be published at least once a week for four successive weeks. MCL 600.3208. A true copy of the notice "[must] be posted in a conspicuous place upon any part of the premises described in the notice" within 15 days after the notice was first published. *Id*.

Note: "The statute authorizing foreclosure by advertisement does not require actual notice to the mortgagor." *Robulus v American State Bank*, 258 Mich 21, 22 (1932). However, to conclusively presume that a property has been abandoned, a mortgagee must mail notice of foreclosure to a mortgagor. MCL 600.3241(a). Other conditions must also be met before a property may be presumed abandoned. See MCL 600.3241.

Committee Tip:

Notwithstanding the fact that actual notice to a mortgagor is not required in foreclosures by advertisement, mortgagees ordinarily mail a copy of the foreclosure notice to mortgagors.

C. Reinstatement Prior to Sale

During the period between the initial default and the foreclosure sale, the mortgagor has the opportunity to reinstate the mortgage by paying the amount claimed to be due. See generally, *Sindlinger v Paul*, 428 Mich 161, 164 (1987). In *Sindlinger*, the Michigan Supreme Court adopted "'the generally prevailing rule . . . that a tender of arrears due on a mortgage containing an acceleration clause, made before the holder of the mortgage has exercised his option to declare the entire amount of the debt due, prevents the exercise of such option.'" *Id*., quoting 55 Am Jur, Mortgages, § 389, p 433 (alteration added).

D. Foreclosure Sale and Proceeds

If the mortgage is not reinstated or otherwise resolved, the property must be sold at a public foreclosure sale to the highest bidder. MCL 600.3216. The sale must be conducted between the hours of 9 a.m. and 4 p.m. at the circuit court in the county where all or part of the property is located, and the sale must be conducted by the person so appointed in the mortgage or by the county sheriff, undersheriff, or deputy sheriff. *Id*.

Any member of the public, including the mortgagee, may bid at the sale. MCL 600.3228. A mortgagee that bids at the sale "'"is not required to pay cash, but rather is permitted to make a credit bid because any cash tendered would be returned to it."'" *Talmer Bank & Trust v Parikh*, 304 Mich App 373, 387 (2014), vacated in part on other grounds 497 Mich 857 (2014)[20] (citations omitted). This is called a *full credit bid*. See *id.*

Subject to the mortgagor's right of redemption, the purchaser acquires all the rights and title of the mortgagor; his or her title is subject to any existing liens created prior to the mortgage. MCL

[20]For more information on the precedential value of an opinion with negative subsequent history, see the note on precedential value at the beginning of this benchbook.

600.3236. However, his or her title is free and clear of any liens vested subsequent to the creation of the mortgage. *Id*.

Where the mortgaged property is purchased at the foreclosure sale for the amount of the debt, the debt is satisfied and the mortgage extinguished. *Guardian Depositors Corp v Hebb*, 290 Mich 427, 432 (1939); *Talmer*, 304 Mich App at 387. "[T]he phrase 'satisfying the mortgage' in MCL 600.3252 refers to paying the entirety of the debt secured by the mortgage." *In re Claim for Surplus Funds*, 328 Mich App 313, 320 (2019) (the mortgagee's unsuccessful bid below the mortgage balance did not represent "the amount necessary to satisfy the mortgage," and the mortgage was not satisfied where a deficiency remained following the successful bid[21]).

1. Disposition of Surplus Money

The money from the sale is applied first to satisfying the outstanding debt on the mortgage and paying the costs of the sale. MCL 600.3252. Where the bid is greater than the debt owed, any surplus moneys may be paid over to the mortgagor on demand unless a claimant files a verified statement prior to the distribution of the surplus attesting that he or she has a subsequent mortgage or lien on the premises. *Id*. In the latter case, the person responsible for the distribution of the money files the statement with the circuit court and deposits the money in the court escrow. *Id*. Upon motion, the court then holds a hearing to determine the proper distribution of the surplus. *Id*.

> MCL 600.3252 requires the court to distribute surplus funds from a mortgage foreclosure sale by advertisement to any subsequent mortgagees or lienholders in accordance with their respective priorities under MCL 565.29 and related caselaw. While these interests may compete or conflict, MCL 600.3252 allows the court, in situations involving conflicting interests, to take proofs at a hearing and direct the disposition accordingly. Any remaining balance may then be distributed to the mortgagor, the mortgagor's representatives, or the mortgagor's assigns. [*In re $55,336.17 Surplus Funds*, 319 Mich App 501, 513 (2017) (concluding that "through MCL 600.3252, the Legislature intended to provide a limited avenue for collection of foreclosure sale surplus proceeds to subsequent mortgagees and lienholders, whose security

[21] See Section 7.3(D)(1) and Section 7.3(D)(2) respectively for additional information on the disposition of surplus funds and deficiencies.

> interests in real property have been extinguished by the foreclosure of a senior mortgage, independent of their option to redeem").]

Accordingly, in *$55,336.17 Surplus Funds*, the appellee's "interest in the surplus funds, as a junior mortgagee, was superior to appellant's, as the legal representative of the mortgagor." *$55,336.17 Surplus Funds*, 319 Mich App at 513-514. "The trial court therefore did not err when it entered an order distributing the $55,336.17 in surplus funds to [the appellee]." *Id*. at 514 (additionally concluding that "[r]egardless of whether [the appellee's] *security interest* in the property as junior mortgagee persisted until the expiration of the statutory redemption period, [the appellee] retained a right to claim a priority interest *in the surplus funds* over the mortgagor as a subsequent mortgagee or lienholder at the time of the foreclosure sale pursuant to the explicit language of MCL 600.3252"); see *$55,336.17 Surplus Funds*, 319 Mich App at 510.

"[A] foreclosure sale extinguishes [a] mortgage." *In re Claim for Surplus Funds*, 328 Mich App 313, 318 (2019). However, the phrase "extinguishing the mortgage" is not synonymous with "satisfying the mortgage" as used in MCL 600.3252. *In re Claim for Surplus Funds*, 328 Mich App at 319. "[I]t is unambiguous that 'satisfying the mortgage on which the real estate was sold' refers to paying off the entirety of the debt secured by the mortgage." *Id*. at 319. As such, neither the mortgagee's bid nor its agreement to that amount in its "bid sheet" represented "the amount necessary to satisfy the mortgage." *Id*. at 320. Therefore, proceeds paid in excess of the amount of the mortgagee's unsuccessful bid were not surplus funds and the mortgage was not satisfied where a deficiency remained following the successful bid. *Id*. at 320 (thus, there were no surplus funds to distribute to the mortgagor).

2. Deficiencies

Where the highest bid equals the fair market value of the property but is less than the outstanding debt, the mortgagee may bring a suit at law against the mortgagor for the deficiency. *New York Life Ins Co v Erb*, 276 Mich 610, 613 (1936). See also MCL 600.3280; *Talmer*, 304 Mich App at 386-387. "The 'true value' of the foreclosed property is thus relevant and can aid a defending debtor in a deficiency action when the true value is more than the purchase price." *Talmer*, 304 Mich App at 387. However, if the amount of the bid is less than the fair market value, the deficiency is determined by the difference between the mortgage debt and the fair market value, rather than between the

mortgage debt and the amount bid. MCL 600.3280; *Guardian Depositors Corp*, 290 Mich at 432-433.

3. Liability for Interest, Insurance Costs, or Taxes Arising After Foreclosure Sale

Where a mortgagor elects not to exercise his or her right of redemption, the mortgagor is not liable for any interest, insurance costs, or taxes arising after the foreclosure sale. *Bank of Three Oaks v Lakefront Properties*, 178 Mich App 551, 555 (1989). In contrast, a mortgagor who redeems the property is liable for any interest, insurance costs, or taxes arising between the foreclosure sale and the mortgagor's redemption. *Id*.

E. Redemption

After the foreclosure sale, the mortgagor, his or her heirs or personal representative, or persons with a recorded interest in the property claiming under any of those individuals have a specific period of time in which to redeem the property by paying the amount that was bid for the premises, with interest at the rate set by the mortgage, plus other costs for which the mortgagor would have been responsible if the mortgagee had not foreclosed on the property, including interest on those costs. MCL 600.3240(1)-(2); MCL 600.3240(4).

The length of the redemption period varies depending on the type of property. Where no other period is specified for the property, and subject to the inspection requirements and prohibition against damage to the property as outlined in MCL 600.3238 the period of redemption is one year from the date of the foreclosure sale. MCL 600.3240(12). Redemption periods specific to certain properties are as follows:

- Subject to the inspection requirements and prohibition against damage to the property as outlined in MCL 600.3238, six months for commercial or industrial property or multifamily residential property with more than four units. MCL 600.3240(7).[22]

- Subject to the inspection requirements and prohibition against damage to the property as outlined in MCL 600.3238, six months for residential property with not more than four units if:[23]

[22] Mortgages executed on or after January 1, 1965.

[23] Mortgages executed on or after January 1, 1965.

- the amount due on the mortgage is more than 66-2/3 percent of the original debt,
- the property has not been abandoned, and
- the property is not used for agricultural purposes. MCL 600.3240(8).

- One month for residential property with not more than four units that was abandoned (as determined under MCL 600.3241) *before* the initiation of foreclosure proceedings. MCL 600.3240(9).
- 30 days or until the expiration of the time period for providing notice in MCL 600.3241a(c), whichever is later, for residential property with not more than four units that was abandoned (as determined under MCL 600.3241a) *after* the initiation of foreclosure proceedings. MCL 600.3240(10).
- Subject to the inspection requirements and prohibition against damage to the property as outlined in MCL 600.3238, one year for property used for agricultural purposes. MCL 600.3240(11).

1. Right to Inspection During Redemption Period

The purchaser of the property at the foreclosure sale has the right to inspect the property periodically throughout the redemption period. MCL 600.3238.[24] In addition to the notice required by MCL 600.3237, "the purchaser shall provide notice to the mortgagor by certified mail, physical posting on the

[24]If the purchaser intends to conduct an interior inspection of property purchased at a foreclosure sale pursuant to MCL 600.3238 during the redemption period, "the purchaser shall provide an initial notice to the mortgagor and any other person that has possession of the property in writing that contains all of the following:

(a) The identity of the purchaser.

(b) The residence or business address, mailing address, telephone number, and, if applicable, electronic mail address at which the purchaser may be contacted.

(c) The date of the sale, the amount of the sale, and the estimated date the redemption period expires.

(d) The details of the purchaser's rights of inspection under [MCL 600.3238].

(e) One or more alternative methods for surrendering control of the property under [MCL 600.3278].

(f) A statement that if the mortgagor intends to vacate the property at any time after the sale, he or she must notify the purchaser as required by [MCL 600.3278], and that if the mortgagor does not do so, he or she may risk heightened liability for damage to the property." MCL 600.3237(1).

The notice must be provided by certified mail, physical posting on the property, or any other method reasonably calculated to achieve actual notice. MCL 600.3237(2).

property, or in any manner reasonably calculated to achieve actual notice of the purchaser's intent to inspect the property at least 72 hours in advance[.]" MCL 600.3238(2).

The purchaser may immediately initiate summary proceedings according to the procedure in MCL 600.5701 *et seq.*, or file an action for any other relief necessary to protect the property from damage, "[i]f an inspection [of the property] under [MCL 600.3238] is unreasonably refused or if damage to the property is imminent or has occurred[.]" MCL 600.3238(6). In any action for possession or relief, the purchaser may also name as a party any person who may redeem the property under MCL 600.3240. MCL 600.3238(6). Before commencing summary proceedings, "the purchaser shall provide notice to the mortgagor by certified mail, physical posting on the property, or in any other manner reasonably calculated to achieve actual notice, that the purchaser intends to commence summary proceedings if the damage or condition causing reasonable belief that damage is imminent is not repaired or corrected within 7 days after receipt of the notice." MCL 600.3238(7). If "the damage or condition causing reasonable belief that damage is imminent is repaired or corrected within the 7-day period," or if "[t]he mortgagor and the purchaser agree on procedures and a timeline to repair the damage or correct the condition causing reasonable belief that damage is imminent" and that timeline is adhered to or extended by agreement, the purchaser must not commence summary proceedings for possession. MCL 600.3238(8)(a)-(b).

The trial court must consider the totality of the circumstances surrounding the damage or condition that threatens imminent damage in determining whether to enter a judgment for possession. MCL 600.3238(9). Factors to consider include, but are not limited to:

> (a) The cause of the damage or condition.
>
> (b) Whether the mortgagor has taken appropriate steps to repair the damage or correct the condition and to secure the property from further damage.
>
> (c) Whether the mortgagor has promptly contacted the purchaser and any property insurer regarding the damage or condition.
>
> (d) Whether any delay in repairs or corrections is affirmatively caused by the purchaser or the property insurer. [MCL 600.3238(9).]

If the court enters a possession judgment in the purchaser's favor, the redemption period is terminated and full title vests in the purchaser. MCL 600.3238(10).

2. Liability for Damage During Redemption Period

The mortgagor and any other person liable on the mortgage is liable to the purchaser or any other holder of the title to the property "for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage." MCL 600.3278(1). Moreover, if the purchaser provided notice pursuant to MCL 600.3237 (notice regarding interior inspection) and the mortgagor intends to move from the property, the mortgagor must inform[25] the purchaser at least 10 days before vacating the property so that the property may be secured. MCL 600.3278(2).

If the purchaser provided notice under MCL 600.3237, two different rebuttable presumptions apply depending on the circumstances:

> (a) There is a rebuttable presumption that the mortgagor is liable to the purchaser at the foreclosure sale for all damage to the property that occurs before the expiration of the redemption period if the mortgagor does any of the following:
>
> > (*i*) Subject to [MCL 600.3238], fails to consent to an initial inspection, comply with a request for information on the condition of the property, or consent to an inspection of the property after the initial inspection, if requested.
> >
> > (*ii*) Fails to provide timely notice to the purchaser under this subsection.
> >
> > (*iii*) Fails to surrender control of the property in a manner that reasonably provides the purchaser with the opportunity to secure it.
>
> (b) There is a rebuttable presumption that the mortgagor is not liable for damage to the property that occurs after the mortgager [sic] surrenders

[25] This information may be conveyed by "electronic mail, certified mail, or any other method reasonably calculated to achieve actual notice[.]" MCL 600.3278(2).

> control of the property if the mortgagor does all of the following:
>
> > (*i*) Subject to [MCL 600.3238], consents to an initial inspection, complies with a request for information on the condition of the property, and consents to inspections of the property after the initial inspection, if requested.
> >
> > (*ii*) Provides timely notice to the purchaser under this subsection.
> >
> > (*iii*) Surrenders control of the property in a manner that reasonably provides the purchaser with the opportunity to secure it. [MCL 600.3278(2).]

3. Removal of Fixtures During Redemption Period

The trial court properly dismissed a larceny charge against a defendant-mortgagor who removed fixtures during the redemption period where the mortgagor maintained exclusive possessory rights in the property until the expiration of the redemption period; accordingly, the defendant did not take the "property of another" for purposes of Michigan's larceny statute because the foreclosure-sale purchaser had no possessory interest in the property during the redemption period.[26] *People v March*, 499 Mich 389, 421-422 (2016). A foreclosure-sale purchaser holds equitable title to the property during the redemption period, and equitable title gives the purchaser no possessory rights. *Id.* at 422. Because Michigan's larceny statute, MCL 750.360, adopted the common law of larceny, which protects possessory rights, the defendant-mortgagor could not have committed larceny by removing the fixtures during the redemption period. *March*, 499 Mich at 422. The Court noted that the "defendant's actions might properly give rise to alternative criminal offenses[,]" though the Court did not opine on their applicability, and that the foreclosure-sale purchaser "has various civil remedies[]" against the mortgagor for removal of the fixtures. *Id.* at 393 n 1. See Section 7.3(E)(2) for a discussion of liability for damages during the redemption period.

[26] However, the Court's conclusion in *March* with respect to the larceny charge was "limited to circumstances in which the mortgagor retains his possessory rights in the property during the redemption period and does not, for instance, contract them away." *People v March*, 499 Mich 389, 394 n 1 (2016).

4. Failure to Redeem

If a mortgagor fails to redeem the property within the time period allowed for redemption, full title to the property vests in the purchaser, MCL 600.3236, and all of the mortgagor's rights in and to the property are extinguished, *Bryan v JP Morgan Chase Bank*, 304 Mich App 708, 713 (2014). Accordingly, a mortgagor lacks standing to bring a lawsuit challenging the foreclosure proceedings after the expiration of the redemption period. *Id.* at 715.

F. Possession After the Sale

The mortgagor has the right to retain "'the possession and benefits of the mortgaged premises'" during the redemption period, which includes the right to lease or sell the property. *Kubczak v Chem Bank & Trust Co*, 456 Mich 653, 660 (1998), quoting *Mass Mut Life Ins Co v Sutton*, 278 Mich 457, 461 (1936). However, "a mortgagee can obtain possession, but only for consideration, and pursuant to an explicit agreement." *Kubczak*, 456 Mich at 661 (internal citations omitted).

G. Summary Proceedings Following Foreclosure

"When the period of redemption expires, continued possession by the mortgagor is unlawful, and no notice to quit is necessary." *Shelby Co v Dickinson*, 259 Mich 197, 198 (1932). The purchaser of the property may initiate an action for possession under the Summary Proceedings Act, which provides that "[a] person entitled to possession of premises may recover possession by summary proceedings . . . [w]hen a person continues in possession of premises sold by virtue of a mortgage or execution, after the time limited by law for redemption of the premises." MCL 600.5714(1)(g). See Chapter 4 for a detailed discussion of summary proceedings.

7.4 Defenses to Foreclosure

"[A] mortgagor seeking to set aside a foreclosure by advertisement must allege facts to support three essential aspects of a claim: (1) fraud or irregularity in the foreclosure procedure; (2) prejudice to the mortgagor; and (3) a causal relationship between the alleged fraud or irregularity and the alleged prejudice, i.e., that the mortgagor would have been in a better position to preserve the property interest absent the fraud or irregularity." *Diem v Sallie Mae Home Loans, Inc*, 307 Mich App 204, 210-211 (2014), citing *Kim v JPMorgan Chase Bank*, 493 Mich 98, 115-116 (2012). Accordingly, "defects or irregularities in a foreclosure proceeding result in a foreclosure that is voidable, not void *ab initio*." *Kim*, 493 Mich at 115.

"Generally speaking, any defense against . . . the obligation secured by a mortgage is a defense against, or a permissible objection to, its foreclosure." 10A Michigan Pleading & Practice (2d ed), § 74:16. However, absent fraud, an unfair proceeding, or improper notice, setting aside a foreclosure sale by advertisement requires "'a strong case'" and "'some peculiar exigency[.]'" *Detroit Trust Co v Agozzinio*, 280 Mich 402, 405-406 (1937), quoting *Page v Kress*, 80 Mich 85, 89 (1890). See also *Cramer v Metro Savings & Loan Ass'n*, 401 Mich 252, 261 (1977).

"[T]he mortgagor may hold over after foreclosure by advertisement and test the validity of the sale in the summary proceeding."[27] *Mfrs Hanover Mtg Corp v Snell*, 142 Mich App 548, 553 (1985), citing *Reid v Rylander*, 270 Mich 263, 267 (1935). "The mortgagor may raise whatever defenses are available in a summary eviction proceeding."[28] *Mfrs Hanover Mtg Corp*, 142 Mich App at 553-554, citing MCL 600.5714. However, in *Reid*, 270 Mich at 267, the Court stated that "underlying equities, if any, bearing on the instrument . . . cannot be made triable issues in a summary proceeding."

"The district court has jurisdiction to hear and determine equitable claims and defenses involving the mortgagor's interest in the property." *Mfrs Hanover Mtg Corp*, 142 Mich App at 554, citing MCL 600.8302(3) ("In [a summary proceeding], the district court may hear and determine an equitable claim . . . involving a right, interest, obligation, or title in land."). See also MCR 4.201(H)(1)(a)(*ii*), which expressly states that in a summary proceeding, a party may join with a complaint or an answer a claim or a counterclaim for equitable relief. MCR 4.201(H)(2)(a) further states that "[a] summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed." Removal is only necessary when a money claim or counterclaim "is introduced"[29] and "is sufficiently shown" to exceed the district court's jurisdictional limit,[30] and then, only the money claim or counterclaim need be removed. MCR 4.201(H)(2)(b).

[27] See Chapter 4 for detailed information on the Summary Proceedings Act.

[28] See Chapter 5 for detailed information on defenses to a summary proceeding.

[29] "[T]he filing of a stipulated consent judgment does not constitute 'introduction' of a 'claim or counterclaim for money judgment.'" *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 571 (2013).

[30] The district court's jurisdictional limit is $25,000. MCL 600.8301(1).

A. Defenses to the Foreclosure Proceedings

1. Noncompliance With Statutory Foreclosure Procedures

Substantial compliance with the statutory requirements is required to properly foreclose a mortgage under a power-of-sale clause. *Peterson v Jacobs*, 303 Mich 329, 335 (1942). "Such compliance means a strict compliance but does not include something not substantial." *Id*. "[S]light and inconsequential irregularities in a foreclosure would not vitiate the sale[.]" *Id*. at 335. For example, a notice of sale's failure to comply with the requirement that it indicate the assignment and reassignment of a mortgage did not automatically void the foreclosure sale. *Id*. at 335-336.

Fault need not be shown to set aside a foreclosure sale that did not substantially comply with the statutory requirements. *Grover v Fox*, 36 Mich 461 (1877). "[I]n executing the power of sale in a mortgage the statutory proceedings must comply substantially at least with all the conditions set by the legislature, and those who conduct the foreclosure must observe good faith and pay a proper regard to the interests of all who may be affected by the proceedings, and no defect or misstep in matters of substance will be cured or excused by any proof that it happened by mistake and was not induced by a bad purpose." *Id*. at 466.

However, a plaintiff is still required to demonstrate prejudice as a result of any statutory noncompliance. *Diem v Sallie Mae Home Loans, Inc*, 307 Mich App 204, 211 (2014). Even assuming that the foreclosure violated MCL 600.3204, the Court rejected the plaintiff's wrongful foreclosure claim because the plaintiff failed to allege "a causal connection between the alleged fraud or irregularity in the foreclosure procedure and any ability [the plaintiff] might have had to preserve his property interest." *Diem*, 307 Mich App at 212.

2. Length of the Redemption Period

After the foreclosure sale, the mortgagor, his or her heirs or personal representative, or persons with a recorded interest in the property claiming under any of those individuals have a specific period of time in which to redeem the property by paying the amount that was bid for the premises, with interest at the rate set by the mortgage, plus other costs for which the mortgagor would have been responsible if the mortgagee had not foreclosed on the property, including interest on those costs. MCL 600.3240(1)-(2); MCL 600.3240(4). The parties may agree,

orally or in writing, to an extension of the redemption period. *Macklem v Warren Constr Co*, 343 Mich 334, 339 (1955). The statute of frauds does not prohibit oral extensions, and the party claiming an extension has the burden of proving it by a preponderance of the evidence. *Id*.

"MCL 600.3240 . . . specifies the requirements for redemption, leaving no room for equitable considerations absent fraud, accident, or mistake." *Senters v Ottawa Sav Bank, FSB*, 443 Mich 45, 55 (1993).

A mortgagor's military service tolls the statutory redemption period.[31] 50 USC 3936(b).

Bankruptcy proceedings do not toll the statutory redemption period. *Cain v Wells Fargo Bank, NA (In re Cain)*, 423 F3d 617, 620-621 (CA 6, 2005). However, a bankruptcy petition filed before a foreclosure sale stays the foreclosure proceedings. *Stackpoole v Dep't of Treasury*, 194 Mich App 112, 116 (1992).

Michigan adheres to the doctrine against clogging the equity of redemption; agreements that restrain or impair a mortgagor's right of redemption may clog the equity of redemption and must be carefully scrutinized.[32] *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 295 (1995). "Clogging occurs only where there exists a contractual provision that could cut off the right of redemption." *Blackwell Ford, Inc v Calhoun*, 219 Mich App 203, 213 (1996). "A mortgagor may . . . sell and convey its equity of redemption to the mortgagee in a contract that is separate and distinct from the mortgage agreement and entered into in good faith for good consideration." *Oakland Hills Dev Corp*, 212 Mich App at 295. "[A] mortgagor may not, at the time the mortgage is created, surrender his equitable right to redeem the property following a default." *Blackwell Ford Inc*, 219 Mich App at 209.

3. Servicemembers[33]

Unless ordered by a court, foreclosure by advertisement of a servicemember's mortgage or sale of a servicemember's mortgaged property is invalid when the foreclosure or sale takes

[31]See Section 7.6 for more information on servicemembers and mortgages.

[32]For a discussion of clogging the equity of redemption, see *Blackwell Ford, Inc v Calhoun*, 219 Mich App 203, 208-215 (1996).

[33]See Section 7.6 for information on the federal protections provided by the Servicemembers Civil Relief Act in cases involving foreclosure or sale of a servicemember's mortgaged property.

place during the servicemember's military service or within six months after the servicemember's service ends if:

- the servicemember entered into the mortgage before beginning his or her period of service or
- the servicemember is deployed in service overseas.[34] MCL 600.3285(1).

"A person shall not, individually or acting through another person, foreclose, sell, or attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid under [MCL 600.3285]." MCL 600.3285(2). "A person who violates [MCL 600.3285(2)] is subject to a civil fine of $2,000.00." *Id*.

4. Loss Mitigation[35]

Federal regulations prohibit a person from foreclosing on a principal residence without providing the mortgagor with an opportunity to qualify for loss mitigation. See generally, 12 CFR 1024.39–12 CFR 1024.41.[36] "*Loss mitigation option* means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the [mortgage] servicer to the borrower." 12 CFR 1024.31 (emphasis added).

As part of the loss mitigation process, the person foreclosing the mortgage must designate a single contact person or department for a delinquent mortgagor during the loss mitigation process. See 12 CFR 1024.40(a)(1) (contact person must be assigned no later than the 45th day of the mortgagor's delinquency).

The loss mitigation process requires the person foreclosing on the mortgage to provide a delinquent mortgagor with written notice informing the mortgagor that he or she may be eligible for loan modification in order to avoid foreclosure. 12 CFR 1024.39(b)(2)(*iii*). According to 12 CFR 1024.39(b)(2)(*i*)-(*v*), the written notice must be provided and:

- encourage the mortgagor to contact his or her mortgage servicer,

[34]Applies to mortgages effective on or after May 21, 2008. MCL 600.3285(4).

[35]For a comprehensive discussion of the mortgage service regulations effective January 10, 2014, see http://www.consumerfinance.gov/f/201311_cfpb_respa-narrative-exam-procedures.pdf.

[36] The provisions of the federal loss mitigation regulations may be enforced under 12 USC 2605(f) of the Real Estate Settlement Procedures Act (RESPA). Note that effective June 19, 2014, 2014 PA 125 repealed MCL 600.3206, the Michigan statute governing loss mitigation as it relates to foreclosure actions.

- include the assigned contact person's or department's telephone number and mailing address,
- if applicable, include "a brief description of examples of loss mitigation options that may be available" to the mortgagor from the loan servicer,
- if applicable, include instructions about applying for loss mitigation or information about how the mortgagor may "obtain more information about loss mitigation options[,]" and
- include the website at which the mortgagor may access a "list of homeownership counselors or counseling organizations, and the [United States Department of Housing and Urban Development (HUD)] toll-free telephone number to access homeownership counselors or counseling organizations."

B. Defenses to the Underlying Mortgage

Committee Tip:

It is not clear whether a mortgagor may challenge the validity of the underlying mortgage during summary proceedings following foreclosure. A mortgagor may challenge the propriety of the proceedings that resulted in foreclosure. See Mfrs Hanover Mtg Corp v Snell, 142 Mich App 548, 553 (1985). A district court may hear any equitable claim or counterclaim arising from the dispute forming the basis of a summary proceeding. See MCR 4.201(H)(1)(a)(ii). However, the Supreme Court stated that "underlying equities, if any, bearing on the instrument . . . cannot be made triable issues in a summary proceeding." Reid v Rylander, 270 Mich 263, 267 (1935). But see MCL 600.8302(3), which states that in a summary proceeding "[a] district court may hear and determine an equitable claim . . . involving a right, interest, obligation, or title in land." Because the issue is unclear, a brief discussion of a few of the defenses to foreclosure based on challenges to the validity of the underlying mortgage are included in the benchbook.

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1. High-Cost Mortgages[37]

The Home Ownership and Equity Protection Act (HOEPA), an amendment to the Truth in Lending Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, an act that broadened the scope of HOEPA coverage, were enacted to provide certain protections to mortgagors in cases of high-cost mortgages.[38]

HOEPA applies to high-cost mortgages and refinance mortgages secured by the mortgagor's principal residence.[39] A mortgage is a high-cost mortgage and merits HOEPA protection if:

- The loan's APR (annual percentage rate) exceeds specific limits set for first lien mortgages and junior mortgages.[40] 15 USC 1602(bb)(1)(A)(*i*)(I)-(II).
- The points and fees exceed specific percentages based on the total loan amount.[41] 15 USC 1602(bb)(1)(A)(*ii*)(I)-(II).
- The loan charges a prepayment penalty under certain circumstances.[42] 15 USC 1602(bb)(1)(A)(*iii*).

HOEPA prohibits a lender from making a residential mortgage loan unless it "makes a reasonable and good faith determination based on verified and documented information that . . . the consumer has a reasonable ability to repay the loan[.]" 15 USC 1639c(a)(1); 12 CFR 1026.34(a)(4).

HOEPA requires that a lender make specific disclosures to a consumer before a loan is finalized. See 15 USC 1639(a)(1)-(2); 12 CFR 1026.31; 12 CFR 1026.32(c). In addition to required content, HOEPA prohibits certain terms and practices from being

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[37]For a comprehensive discussion of the Home Ownership and Equity Protection Act (HOEPA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act, see http://www.consumerfinance.gov/f/201305_compliance-guide_home-ownership-and-equity-protection-act-rule.pdf and http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/.

[38]For other consumer protection laws and regulations applicable to mortgages, see the Consumer Finance Protection Bureau's website at http://www.consumerfinance.gov/regulations/.

[39]Remedies for violations of HOEPA provisions are found in 15 USC 1640(a)(1)-(4).

[40]HOEPA protections apply if the APR exceeds 6.5 percent above prime rate for first lien mortgages and 8.5 percent above prime rate for junior mortgages.

[41]HOEPA protections apply if the points and fees exceed 5 percent of the total loan amount for loans of $20,000 and above, or the lesser of 8 percent or $1,000 for loan amounts less than $20,000.

[42]HOEPA protections apply if a prepayment penalty exceeds 2 percent of the amount prepaid and where prepayment fees or penalties are charged more than 36 months after the mortgage closed.

included in a mortgage loan and the loan process. Among the terms and practices prohibited by HOEPA are:

- Higher interest rate after default. 15 USC 1639(d).
- Balloon payments more than twice the amount of an average payment (under most circumstances). 15 USC 1639(e).
- Negative amortization. 15 USC 1639(f).
- Extension of credit to a consumer without regard to his or her ability to repay the loan. 15 USC 1639(h).
- Late fees in excess of a certain percentage of the payment amount (unless expressly authorized by the loan documents), late fees imposed before a certain date of the delinquency, and more than one late fee imposed per each late payment. 15 USC 1639(k).

Purchasers or assignees of a high-cost mortgage loan are subject to all claims and defenses that could be brought against the original lender, unless the purchaser or assignee proves "by a preponderance of the evidence[] that a reasonable person exercising ordinary due diligence" could not have determined that the mortgage was a high-cost mortgage. 15 USC 1641(d).

2. Fraud

"Michigan's contract law recognizes several interrelated but distinct common-law doctrines—loosely aggregated under the rubric of 'fraud'—that may entitle a party to a legal or equitable remedy if a contract is obtained as a result of fraud or misrepresentation." *Titan Ins Co v Hyten*, 491 Mich 547, 555 (2012). A mortgagor may challenge a mortgage agreement on the basis of actionable fraud (fraudulent misrepresentation), innocent misrepresentation, or silent fraud (fraudulent concealment). See *id*. Actual or constructive fraud must be shown in order to set aside a statutory sale of the premises. *Postal v Home State Bank for Savings*, 284 Mich 220, 226 (1938).

To establish actionable fraud, the mortgagor must show that:

- the mortgagee made a material representation,
- the representation was false,
- the mortgagee knew the representation was false when he or she made it, or the mortgagee made the representation recklessly and as a positive assertion, without knowledge of its truth,

- the mortgagee intended for the mortgagor to act on the representation,
- the mortgagor acted in reliance on the representation, and
- the mortgagor was injured as a result. *Titan Ins Co*, 491 Mich at 555.

Innocent misrepresentation neither requires knowledge of the falsehood nor the intent that the mortgagor rely on the misrepresentation. Titan Ins Co, 491 Mich at 556 n 5. However, innocent misrepresentation requires "that the misrepresentation be made in connection with making a contract and the injury suffered by the victim must inure to the benefit of the misrepresenter." Id.

Silent fraud, or suppressing the truth "when there is a legal or equitable duty of disclosure[,]" is just as prejudicial as asserting a falsehood. Titan Ins Co, 491 Mich at 557.

3. Mistake

Generally, a party's mistake in executing a mortgage is not sufficient to set aside a properly executed mortgage agreement. Parties have a "duty to ascertain what they [are] doing before signing the documents." *Roosenraad v Sluiter*, 276 Mich 674, 678 (1936). "[I]n the absence of fraud, deceit, misrepresentation or other misconduct . . . the instrument will be upheld." *Id*.

However, "'[i]f a party's own wrongful act has brought another into peril, he is not at liberty to impute the consequences of his acts to a want of vigilance in the injured party, when his own conduct and untruthful assertions have deprived the other of that quality and produced a false sense of security.'" *John Schweyer & Co v Mellon*, 196 Mich 590, 597 (1917), quoting *Eaton v Winnie*, 20 Mich 156 (1870).

4. Undue Influence

Undue influence is a type of fraud, and "the general rules applicable in cases of fraud . . . apply in cases of undue influence as well[.]" *Adams v Adams*, 276 Mich App 704, 710 n 1 (2007). The ultimate question in a matter where one party claims another party exerted undue influence over a person is whether the person acted voluntarily despite the party's influence on him or her. *Kouri v Fassone*, 370 Mich 223, 233 (1963). Undue influence must be determined by assessing the totality of circumstances on a case-by-case basis. *Id*.

5. Duress

"Duress exists where one is induced, by another's *unlawful* act, to make a contract or perform some act under circumstances which prevent his exercising his free will." *Lewis v Doyle*, 182 Mich 141, 150 (1914) (emphasis added). To establish a successful claim of duress, a plaintiff must show that the conduct compelling him or her to act was illegal and that the party who caused the duress is also the party who benefited from the transaction. 8 Mich Civ Jur, Duress, § 4; *Musial v Yatzik*, 329 Mich 379, 383 (1951). See also *Farm Credit Servs of Mich's Heartland, PCA v Weldon*, 232 Mich App 662, 681-682 (1998). Factors to be considered in determining whether a person's conduct resulted from duress include the time that passed between a party's demand for action and the actual transaction at issue, whether the person had a chance to investigate relevant facts, and whether the person had an opportunity to get independent advice about the transaction. 8 Mich Civ Jur, Duress, § 3.

C. Usury

The statutory provisions governing usury in Michigan are found at MCL 438.31 *et seq*. Michigan usury law is broader than the law in many jurisdictions and applies to interest on all contracts. *Hillman's v Em 'N Al's*, 345 Mich 644, 651 (1956).

"'[T]here is a strong presumption against preemption of state law, and preemption will be found only where it is the clear and unequivocal intent of Congress.'" *Konynenbelt v Flagstar Bank*, 242 Mich App 21, 26-27 (2000), quoting *Martinez v Ford Motor Co*, 224 Mich App 247, 252 (1997). Michigan usury law is preempted by federal usury law in certain cases. See *Mitchell v Trustees of United States Mut Real Estate Inv Trust*, 144 Mich App 302, 307-308 (1985). Most significantly, Michigan usury law does not apply to residential mortgage loans secured by a first lien on the property (purchase money mortgages and any loan by which the lender gains first position), when the mortgage involves a federally related mortgage loan that was made after March 31, 1980, by a lender-creditor whose investments in real estate loans total more than $1,000,000 per year. 12 USC 1735f-7a(a)(1)(A)-(C); 12 USC 1735f-5(b)(2)(D) (Depository Institutions Deregulation and Monetary Control Act (DIDA)). Michigan usury law is also preempted in cases involving sellers who take a mortgage on property owned and previously occupied by the seller. 12 USC 1735f-7a(a)(1)(C)(*vi*).

Michigan usury law applies to land contracts. MCL 438.31c(6). See generally, *Olsen v Porter*, 213 Mich App 25, 27 (1995) (usurious land contract subject to reformation).

Usury is a shield rather than a sword; a mortgage with an underlying obligation carrying a usurious rate of interest is not void. Michigan usury law merely bars the lender charging a usurious interest rate from recovering *any* interest, MCL 438.32, but not from recovering principal payments on a loan with a usurious rate. See *Mich Mobile Homeowners Ass'n v Bank of the Commonwealth*, 56 Mich App 206, 211-215 (1974).

In determining the rate of interest, the court will look closely at the real nature of the transaction, rather than at its title. A land contract, or even a warranty deed, that is in fact a mortgage will be classified as a mortgage, and its rate of interest will be examined accordingly by the court. *Boyd v Layher*, 170 Mich App 93, 97 (1988); *Grant v Van Reken*, 71 Mich App 121, 128 (1976). The "taint of usury" may be purged when the usurious obligation is fully canceled and replaced with a new obligation which is not usurious, executed in legal form, and supported by the borrower's promise to repay the money actually received, with legal interest. *Cullins v Magic Mtg, Inc*, 23 Mich App 251, 259 (1970).

A party who has voluntarily satisfied an admitted usurious note may not recover the interest paid. *Sienkiewicz v Leonard Mtg Co*, 59 Mich App 154, 156-157 (1975). See also *Wright v First Nat'l Bank of Monroe*, 297 Mich 315, 328 (1941).

7.5 Judicial Foreclosure of Mortgages and Land Contracts

Judicial foreclosures are equitable actions governed by statute, MCL 600.3180, and there is no right to a jury trial. *Superior Prod Co v Merucci Bros, Inc*, 107 Mich App 153, 161 (1981). With few exceptions, judicial foreclosure of a mortgage is the same as judicial foreclosure of a land contract. Both mortgage and land contract foreclosures are discussed in this section.

In *People's Savings Bank v Geistert*, 253 Mich 694, 705-706 (1931), the Court explained the differences between mortgages and land contracts:

> Though there may be analogies between the rights of a vendor and vendee, and a mortgagor and mortgagee, these relations are separate and distinct. The mortgagor holds the legal title of real estate mortgaged; the vendor holds the legal title of real estate sold. The one is subject to a mortgage given to the mortgagee. The other is subject to a contract given to the vendee. On the performance of the terms of a mortgage, the mortgagor's legal title remains un[e]ncumbered. On the performance of the terms of a land contract by the vendee he is entitled to a conveyance. The right to a conveyance in one

case arises from breach of contract; the right to conveyance in the other case arises from performance of the contract. The vendor holds the legal title and on foreclosure cuts off the right of vendee to acquire the legal title. In mortgage foreclosure the mortgagee may acquire legal title only by foreclosure and sale of property, payment of the purchase price, and expiration of the equity of redemption.

> **Note:** Although the *circuit court* has jurisdiction over real estate and land contract foreclosures,[43] a brief summary of the information is included in this benchbook because a party may challenge the propriety of a foreclosure and sale during summary proceedings in *district court*. MCL 600.3101; *Reid v Rylander*, 270 Mich 263, 267 (1935).

A. Initiation of Suit to Foreclose

Mortgages and land contracts commonly contain acceleration clauses that allow a mortgagee or a vendor to declare that the entire balance on a mortgage or land contract is due after a mortgagor or vendee fails to make timely or sufficient payments. See generally, *Sindlinger v Paul*, 428 Mich 161, 164-165 (1987) (land contract). A vendor or mortgagee may exercise the right to accelerate payment of the entire unpaid balance of a contract or mortgage by filing an action for foreclosure; no additional or previous notice is required. *Bedford v Tetzlaff*, 338 Mich 102, 107 (1953) (land contract). A mortgagee or vendor may not invoke an acceleration clause if the mortgagor or vendee tenders payment before the initiation of a foreclosure. *Sindlinger*, 428 Mich at 164-165.

A vendor is precluded from obtaining a deficiency judgment against a vendee by foreclosure where the vendor has already obtained an order of eviction pursuant to a summary proceedings judgment. *Gruskin v Fisher*, 405 Mich 51, 58-59 (1979) (land contract).

If the mortgagor or vendee has not cured the default by paying the amount in arrears, and if a judgment for the amount in arrears has not already been had, the mortgagee or vendor may file a complaint to initiate foreclosure. "Except as prescribed in [MCR 3.410], the general rules of procedure apply to actions to foreclose mortgages and land contracts." MCR 3.410(A). A complaint initiating judicial foreclosure is properly filed in the circuit court in a county where any part of the premises is located. MCL 600.1605(c).

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[43] MCL 600.3101 *et seq.*, does "not apply to mortgages of real estate and land contracts held by the Michigan state housing development authority."

Specifically, and in addition to complying with MCR 2.111(B), a complaint for foreclosure or satisfaction of a mortgage on real estate or a land contract must indicate "whether an action has ever been brought to recover all or part of the debt secured by the mortgage or land contract and whether part of the debt has been collected or paid." MCR 3.410(B)(1). A mortgagee or vendor may not initiate foreclosure proceedings if judgment for the amount due or part of the amount due has been entered in another civil action, unless the judgment is unsatisfied and the mortgagor or vendee has "no property . . . out of which to satisfy the execution except the mortgaged premises." MCL 600.3105(1).

The complaint must join all necessary and proper parties to the suit. MCR 2.205; *Dederick v Barber*, 44 Mich 19, 21-22 (1880) (mortgage). The complaint must be made by or on behalf of the real party in interest. MCR 2.201(B).

MCR 2.102, MCR 2.105, and MCR 2.106 govern the parties to be served and the manner in which service is to be accomplished. See MCL 600.3101.

B. Mortgagor's or Vendee's Right to Cure

A mortgagor or vendee may cure his or her default and the complaint must be dismissed if the mortgagor or vendee, at any time before the foreclosure sale, "bring[s] into court" the "principal and interest due, with costs." MCL 600.3110. A mortgagor or vendee may "bring[the amount due] into court" by paying the amount into the court or by tendering the amount in open court. *Manzeta v Heidloff*, 371 Mich 248, 250 (1963) (mortgage; as applied to former version of statute). This provision applies only when there is principal and interest due at the time of the complaint *and* when other payments will subsequently become due. MCL 600.3110; *Dumas v Helm*, 15 Mich App 148, 152 (1968) (land contract). Consequently, the provision does not apply when a mortgagee or vendor has elected to accelerate payment of the entire remaining balance on the mortgage or land contract. *Sindlinger v Paul*, 428 Mich 161, 165 (1987). Once a mortgagee or vendor has exercised his or her right to initiate foreclosure and to demand payment of the entire debt, a mortgagor or vendee may not cure the default by paying only the amount in arrears. *Id.*

A mortgagor or vendee is entitled to a stay of the proceedings if after the judgment of sale, "the defendant brings into court the principal and interest due with costs[.]" MCL 600.3120. However, "the court shall enter a judgment of foreclosure and sale to be enforced by a further order of the court upon a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to become due." *Id.*

C. Judgment of Foreclosure

"When a plaintiff files a complaint to foreclose on a mortgage, the trial court may order foreclosure 'sufficient to discharge the amount due on the mortgage on real estate . . . plus costs.'" *Mercantile Bank Mtg Co, LLC v NGPCP/BRYS Centre, LLC*, 305 Mich App 215, 226 (2014), quoting MCL 600.3115. A judgment of foreclosure must calculate and state the amount owed under the written instrument. *Mercantile Bank Mtg Co, LLC*, 305 Mich App at 226. "The mortgagor is entitled to credits on the indebtedness for partial payments made before the judgment of foreclosure." *Id.*, citing *Dusseau v Roscommon State Bank*, 80 Mich App 531, 549 (1978). In *Mercantile Bank Mtg Co, LLC*, the trial court erred when it failed to make a determination in regard to the parties' dispute over the amount owed on the underlying debt. *Mercantile Bank Mtg Co, LLC*, 305 Mich App at 228. The Court of Appeals remanded the case to the trial court to determine what credits were due and to order judgment in the amount sufficient to discharge the debt, plus costs. *Id.*

D. Foreclosure Sale

The requirements of a sale under a judgment of foreclosure are:

- At least 42 days' notice must be given of the sale. MCR 3.410(C).
- Publication of the sale may not begin until expiration of the time allowed for payment of the amount due. MCR 3.410(C).
- The sale may not occur until six months after the complaint for foreclosure of a mortgage was filed, or until three months after the complaint for foreclosure of a land contract was filed. MCL 600.3115; MCR 3.410(C)(1)-(2).

The notice requirements for a judicial foreclosure sale are the same as if the property was being sold on execution.[44] MCL 600.3125; MCL 600.6091. Written or printed notice of the time and place of the sale and a description of the property to be sold must be posted for at least six weeks prior to the sale in three public places in the township or city where the property is to be sold. MCL 600.6052(1). If the place of the sale is different from the location of the property to be sold, notice must be posted in three public places in the city or township where the property is located. *Id*. In addition, a copy of the notice must be published once a week for six consecutive weeks prior to the sale in a

[44] See SCAO Form CC 115, *Notice of Foreclosure Sale*.

newspaper printed in the county in which the premises are located. MCL 600.6052(2). If there is no newspaper in the county, the notice must be published in a newspaper printed in an adjoining county. *Id*.

If the sale is adjourned for more than a week, notice of the changed date must be published in the same newspaper as was the original notice; notice of the changed date must also be posted where the sale is to be held. MCL 600.6052(3). The posting and publication of the notice must continue throughout the adjournment until the date of the sale. *Id*.

The sale must be public and must be held between the hours of 9 a.m. and 4 p.m. at the circuit court in the county where the property is located, or at another place as directed by the court. MCL 600.3125. The county clerk, a deputy county clerk, or another person authorized by the court must conduct the sale. *Id*.

Before the sale takes place, the circuit court may determine a minimum price, or "upset" price, that a buyer must bid for the property. MCL 600.3155. This price should be based on the fair value of the property, rather than the unpaid outstanding balance on the property. *James S Holden Co v Applebaum*, 267 Mich 632, 635-636 (1934) (land contract). In fixing an upset price, the court also has discretion to fix the amount of the deficiency, if any, along with the upset bid, and to decree that if no bid larger than the upset price is submitted, then the property shall vest with the mortgagee or vendor, as if he or she had made such a bid. *Kramer v Davis*, 371 Mich 464, 471-472 (1963) (land contract).

Although inadequacy of the price bid alone does not justify setting aside a sale, a sale may be set aside where the price bid was grossly inadequate and there was fraud, mistake, or general unfairness in the proceedings. *Greenberg v Kaplan*, 277 Mich 1, 7-8 (1936) (land contract). A party may be given the opportunity to redeem a foreclosed property after the expiration of the redemption period when a "shockingly inadequate price" was bid and circumstances amounted to "unfairness bordering . . . on fraud[,]" even though the foreclosure sale technically complied with requirements. *In re Spears Estate*, 359 Mich 90, 96 (1960) (sheriff's sale).

E. Confirmation of Sale

While there is no express statutory requirement that the court confirm the foreclosure sale, this was the common-law practice, and confirmation of the sale is referred to in MCL 600.3150 (court determines any deficiency judgment after confirmation of the report of sale). "Confirmation by the court is not a mere ministerial act but a judicial function involving consideration of the circumstances in each

instance and the exercise of sound discretion." *Detroit Trust Co v Hart*, 277 Mich 561, 563 (1936) (mortgage).

As a general rule, the trial court has broad discretion in confirming a sale. *Provident Mut Life Ins Co of Philadelphia v Vinton Co*, 282 Mich 84, 89 (1937) (mortgage); *Detroit Trust Co*, 277 Mich at 563. "Mere irregularities are not sufficient to prevent confirmation." *Provident Mut Life Ins*, 282 Mich at 89. However, "the equity court in the exercise of a fair discretion upon proper showing being made may decline confirmation of a mortgage sale in an equitable foreclosure proceeding if the amount bid is inadequate to the extent that it shocks the conscience of the court." *Mich Trust Co v Cody*, 264 Mich 258, 263 (1933) (mortgage).

After the sale, the person conducting the sale must complete a certificate containing a description of the premises sold, the price bid for each lot or parcel, the money paid for each lot or parcel, and the period of redemption.[45] MCL 600.6055(1)(a)-(d). The certificate, once certified by the register of deeds, is prima facie evidence of the information contained in the certificate, the regularity of the sale, and the regularity of all proceedings before the sale. MCL 600.6055(3).

The original judgment of foreclosure must indicate "which defendants, if any, are personally liable . . . for the mortgage debt." MCL 600.3150. After confirmation of the report of sale,[46] the court must determine any deficiency amount for which a defendant is responsible. *Id.*; MCL 600.3160. The deficiency amount is any amount of principal, interest, or costs remaining unpaid after applying the amount paid for the premises to the total amount due on the mortgage or the land contract. MCL 600.3150. Any surplus moneys after applying the amount paid for the premises to the remaining debt must be "brought into court for the use of the defendant, or of the person entitled to it, subject to the order of the court." MCL 600.3135(1). See also MCR 3.410(D).

F. Redemption

The mortgagor, the mortgagor's heirs or personal representative, or any person that has a recorded interest in the property lawfully claiming under the mortgagor or the mortgagor's heirs or personal representative, or the vendee, the vendee's heirs or personal representative or any person lawfully claiming under the vendee or the vendee's heirs or personal representative, may redeem the premises sold as ordered under [MCL 600.3115] within six months

[45] See SCAO Form CC 116, *Clerk's Certificate of Sale of Real Estate Pursuant to Judgment*.

[46] See SCAO Form CC 117, *County Clerk's Report of Sale*.

after the foreclosure sale by paying to the purchaser or the purchaser's personal representative or assigns, or the register of deeds the amount bid for the premises plus interest from the date of sale. MCL 600.3140(1)-(2). "Unless the premises or any parcel of them are redeemed within the time limited for redemption the deed [from the sale] shall become operative as to all parcels not redeemed, and shall vest in the grantee named in the deed, his heirs, or assigns all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage or at any time thereafter." MCL 600.3130(1).

"[U]nder MCL 600.3130(1), if a mortgagor fails to avail itself of the right of redemption, all the mortgagor's rights in and to the property are extinguished." *Can IV Packard Square, LLC v Packard Square, LLC*, 328 Mich App 656, 665 (2019).[47]

The statutory redemption period commences on the date of the sheriff's sale and not the date the sheriff's deed is recorded. *Great Lakes Prop Mgt Consultants, Inc v HP Foreclosure Solutions, LLC*, ___ Mich App ___, ___ (2023) (holding "the statutory redemption period elapsed six months from the date of the sheriff's sale," at which time "all right, title, and interest in the property vested in defendant" pursuant to MCL 600.3130(1)). While MCL 600.3232 provides that the deed must be recorded within 20 days of the sale, there is "no remedy for failure to submit the deed to the Register of Deeds within 20 days" because MCL 600.3232 does "not correlate the recording of the deed to the redemption period or state that the recording date becomes the period from which the redemption period runs."[48] *Great Lakes Prop Mgt Consultants, Inc*, ___ Mich App at ___ (quotation marks and citation omitted) (noting the "parties and the trial court appear to have [mistakenly] believed that the recording of the sheriff's deed commenced the statutory redemption period").

Committee Tip:

Just as a person claiming under the mortgagor may redeem the premises, a person claiming under the mortgagee may initiate foreclosure. When the parties to the action are not the same as the original parties to the mortgage, one

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[47] "Because MCL 559.208(2) provides that condominium foreclosures must be in the same manner as real estate mortgage foreclosures," the redemption periods of MCL 600.3140 apply to Michigan's Condominium Act. *Great Lakes Prop Mgt Consultants, Inc v HP Foreclosure Solutions, LLC*, ___ Mich App ___, ___ (2023).

[48] MCL 600.3130(2) similarly provides that the deed must be recorded within 20 days of the sale but provides no remedy for failing to do so.

should check carefully to see how they derived their rights. This is especially true where the plaintiff or the defendant is a trustee or executor for an estate whose authority is sharply defined (which may or may not include the authority to foreclose or redeem). A trust mortgage has additional clearly delineated procedures. See MCL 600.3170; MCR 3.410(E). A routine issue in a foreclosure proceeding is the standing of a party to seek the relief being sought.

The court is authorized to add to the redemption figure the amount of taxes or insurance premiums paid after the foreclosure and prior to the expiration of the redemption period if under the terms of the mortgage the mortgagor would have been liable for taxes or insurance had the mortgage not been foreclosed. MCL 600.3145. However, if the property is not redeemed, the taxes or insurance premiums paid after the confirmation of sale must not be added to or included in any deficiency judgment against the mortgagor. *Id*.

G. Setting Aside a Judicial Foreclosure Sale

Setting aside a sale after judicial foreclosure requires "a strong case" and "some peculiar exigency[.]" *Detroit Trust Co v Agozzinio*, 280 Mich 402, 405-406 (1937). "'When property is exposed for sale under a judicial decree, and offered to the highest bidder, and the sale is without fraud, and is fairly conducted, after proper notice, and is struck off to a third person, it will require a strong case, and some peculiar exigency, to warrant a court in setting it aside.'" *Id*., quoting *Page v Kress*, 80 Mich 85, 89 (1890).

7.6 Servicemembers and Mortgages

One of the purposes of the Servicemembers Civil Relief Act (SCRA) is "to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 USC 3902(2). See also *Walters v Nadell*, 481 Mich 377, 386 (2008) ("Congress enacted the SCRA as a shield to protect servicemembers from having to respond to litigation while in active service"). "[The SCRA] is always to be liberally construed to protect [servicemembers]." *Boone v Lightner*, 319 US 561, 575 (1943) (referring to the Soldiers' and Sailors' Civil Relief Act, the predecessor of the SCRA).

Subchapter III of the SCRA, 50 USC 3951–50 USC 3959, provides protection for servicemembers in proceedings related to the sale or foreclosure of a servicemember's mortgaged property when the

servicemember's military duty materially affects his or her ability to comply with the mortgage obligation. 50 USC 3953.

A. Sale or Foreclosure of Mortgaged Property

Unless court-ordered or authorized by written waiver,[49] 50 USC 3953(c)(1)-(2), the sale or foreclosure of a servicemember's mortgaged property is not valid if

- the mortgage "originated before the period of the servicemember's military service[,]" 50 USC 3953(a)(1);
- the servicemember remains obligated to make payments on the mortgage, 50 USC 3953(a)(1); and
- the sale or foreclosure is made "during, or within one year after, the period of the servicemember's military service[,]" 50 USC 3953(c).

When an action to enforce a mortgage is filed during or within one year of a servicemember's active service and "the servicemember's ability to comply with the obligation is materially affected by military service[,]" the court must, upon application by the servicemember, stay any proceedings initiated to enforce a servicemember's mortgage "for a period of time as justice and equity require," or the court must adjust the servicemember's mortgage obligation "to preserve the interests of all parties." 50 USC 3953(b)(1)-(2). Additionally, the court may take either of these actions "after a hearing and on its own motion[.]" 50 USC 3953(b).

If a servicemember's property is sold to satisfy a mortgage, the servicemember's "period of military service"[50] is not included when computing the length of time a servicemember has to redeem the property; that is, the statutory redemption period is tolled during the servicemember's active duty. 50 USC 3936(b).

It is a Class A misdemeanor to knowingly make, cause to be made, or knowingly attempt to make or cause to be made, a prohibited sale or foreclosure of a servicemember's mortgaged property. 50 USC 3953(d). See 18 USC 3559(a)(6). A person guilty of the misdemeanor is subject to fine of not more than $100,000,[51] imprisonment for not more than one year, or both. 50 USC 3953(d). See 18 USC 3571(b)(5).

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[49] A servicemember may waive "any of the rights and protections provided by [the Servicemembers Civil Relief Act]." 50 USC 3918(a). A waiver that applies to actions listed in 50 USC 3918(b) is effective "only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies." 50 USC 3918(a).

[50] See 50 USC 3911(3) for a definition of *period of military service*.

In addition to the protections offered by the federal law under the SCRA, Michigan law also offers servicemembers protection from foreclosure proceedings under certain circumstances. According to MCL 600.3185(1)(a)-(b):

- If a servicemember is the defendant in a proceeding to foreclose a mortgage or a land contract, and
  - the mortgage or land contract was entered into before the defendant became a servicemember, or
  - the servicemember is deployed overseas,
- the court on its own motion or on a motion by or in behalf of the defendant must
  - stay the proceedings until the servicemember has been out of military service for six months, or
  - issue an equitable order to preserve all parties' interests, or
  - both,
- unless the court finds that the servicemember's ability to comply with the terms of the mortgage or land contract "is not materially affected by the [servicemember's] military service[.]"

MCL 600.3185 "does not apply to a mortgage or land contract entered into before [May 21, 2008]." MCL 600.3185(2).

B. Default Judgments

If a default judgment in a foreclosure proceeding was entered against a servicemember during his or her military service or within 60 days of his or her release from such service, the court, on request by the servicemember or on his or her behalf, must reopen the judgment and allow the servicemember to defend the action if:

- "the servicemember was materially affected by reason of that military service in making a defense to the action[,]" 50 USC 3931(g)(1)(A), and

[51] In the alternative, the amount of the fine may be based on a person's pecuniary loss or on the misdemeanant's pecuniary gain. 18 USC 3571(d). "If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the [misdemeanant], the [misdemeanant] may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process." *Id.* If the misdemeanant is an organization, it is subject to a fine of not more than $200,000. 18 USC 3571(c)(5).

- "the servicemember has a meritorious or legal defense to the action or some part of it." 50 USC 3931(g)(1)(B).

"An application [to set aside a default judgment] must be filed not later than 90 days after the date of the termination of or release from military service." 50 USC 3931(g)(2).

"If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of [the Servicemembers Civil Relief Act], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment." 50 USC 3931(h).

C. Private Right of Action for Violations of the SCRA

A person has a private civil right of action for violations of the SCRA. 50 USC 4042(a). A court may award "[a]ny person aggrieved by a violation of [the SCRA]" all appropriate relief, including equitable or declaratory relief and money damages. 50 USC 4042(a)(1)-(2). The court may award costs and a reasonable attorney fee to an aggrieved person who prevails in a civil action under the SCRA. 50 USC 4042(b).

7.7 Bankruptcy

Bankruptcy may be an option when a person's homeownership interest is threatened. Subsections (A) and (B) present an abbreviated overview of Chapter 7 and Chapter 13 bankruptcies, the two basic forms of bankruptcy for individuals.[52] Subsection (C) sets forth the process for filing a notice of bankruptcy proceeding under 11 USC 101 *et seq*.

A. Chapter 7 Liquidation (Straight Bankruptcy)

Chapter 7 liquidation (also referred to as straight bankruptcy), 11 USC 701–11 USC 727, "requires an individual to give up property which is not 'exempt' under the law, so the property can be sold to pay creditors." National Consumer Law Center, *Answers to Common Bankruptcy Questions*. In a Chapter 7 case, the petitioner's debts, subject to some exceptions, are discharged after a bankruptcy trustee sells the individual's nonexempt assets and distributes the proceeds to the individual's creditors. Legal Information Institute, *Bankruptcy: An Overview*. By exercising the right of redemption, the debtor can "redeem [certain] tangible personal property intended primarily for

[52]For more information see Legal Information Institute, *Bankruptcy: An Overview* (2010), at www.law.cornell.edu/wex/bankruptcy; United States Courts, *Bankruptcy Basics* (2011), at www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx; and National Consumer Law Center at www.nclc.org/.

personal, family, or household use, from a lien securing a dischargeable consumer debt[.]" 11 USC 722. However, "chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt." National Consumer Law Center, *Answers to Common Bankruptcy Questions*.

"Filing a petition under chapter 7 'automatically stays' . . . most collection actions against the debtor or the debtor's property. United States Courts, *Bankruptcy Basics* (2011)." See 11 USC 362. No judicial action is necessary to obtain the automatic stay of collection actions; "[t]he stay arises by operation of law[.]" United States Courts, *Bankruptcy Basics* (2011).

In addition, "[a]mendments to the Bankruptcy Code enacted in . . . the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [Public Law No. 109-8, 119 Stat. 23, April 20, 2005] require the application of a 'means test' to determine whether individual consumer debtors qualify for relief under chapter 7. If such a debtor's income is in excess of certain thresholds, the debtor may not be eligible for chapter 7 relief." United States Courts, *Bankruptcy Basics* (2011).[53]

B. Chapter 13 Reorganization (Adjustment of Debts of an Individual with Regular Income)

Chapter 13 reorganization (formally called *Adjustment of Debts of an Individual With Regular Income*), 11 USC 1301–11 USC 1330, is available to persons with earned income or unearned income, such as SSI[54] and AFDC/FIP[55] payments.

Chapter 13 bankruptcy "is a type of 'reorganization' used by individuals to pay all or a portion of their debts over a period of years using their current income." National Consumer Law Center, *Answers to Common Bankruptcy Questions*. The chapter 13 petitioner files a plan for repaying his or her creditors over a period of time, generally three to five years. United States Courts, *Bankruptcy Basics*. "The most important thing about a chapter 13 case is that it will allow you to keep valuable property—especially your home and car—which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors." National Consumer Law Center, *Answers to Common Bankruptcy Questions*.

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[53] See www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Process.aspx.

[54] Supplemental Security Income.

[55] Aid to Families with Dependent Children/Family Independence Program.

"[C]laim[s] [against a debtor for debts] secured only by a security interest in real property that is the debtor's principal residence" cannot be modified by chapter 13 bankruptcy. 11 USC 1322(b)(2). However, a debtor may challenge a creditor's claim by initiating an *adversary proceeding* "to determine the validity, priority, or extent of a lien or other interest in property[.]" See Fed.R.Bankr.P. 7001(b). Chapter 13 allows a debtor to pay ("cure") the mortgage or land contract arrearage within a "reasonable time" when current payments are maintained, and the last payment on the mortgage or land contract debt is due after the Chapter 13 plan ends. 11 USC 1322(b)(5). Where there is a threat of mortgage foreclosure, the bankruptcy petition must be filed before a valid foreclosure sale in order to obtain the benefits of long-term bankruptcy relief. 11 USC 1322(c)(1).

Upon completion of the Chapter 13 plan, the debtor is entitled to a discharge which is broader than that given Chapter 7 debtors. 11 USC 1328. If unforeseen circumstances prevent a debtor from completing the plan, a hardship discharge can be sought. 11 USC 1328(b). If the debtor cannot complete the plan or get a hardship discharge, the case can be voluntarily dismissed. 11 USC 1307(b).

C. Notice of Bankruptcy Proceedings in State Court Action

MCR 2.421 "provides a process for filing notice of a bankruptcy proceeding that affects a state court action." ADM File No. 2021-50 (staff comment). MCR 2.421 "applies to all state court actions in which a party is a named debtor in a bankruptcy proceeding under 11 USC 101 *et seq*." MCR 2.421(A). However, MCR 2.421 "does not abridge, enlarge, or in any way modify existing rights and procedures under federal law, including bankruptcy proceedings under 11 USC 101 *et seq*." MCR 2.421(F).

A party "who is a named debtor in a bankruptcy proceeding" must "file a notice of the bankruptcy proceeding in the state court action no later than 3 days after becoming subject to" the bankruptcy proceeding and "serve the notice on all other parties in the state court action as provided in MCR 2.107." MCR 2.421(B)(1)-(2). "If a party to a state court action learns that another party in such action is a named debtor in a bankruptcy proceeding and notice of the bankruptcy proceeding in [MCR 2.421(B)] has not previously been filed and served by the debtor," that party may "file a notice of the bankruptcy proceeding in the state court action" and "serve the notice on all other parties in the state court action as provided in MCR 2.107." MCR 2.421(C)(1)-(2). The notice of bankruptcy proceeding must include "[the] name(s) of the debtor(s)," "the court name and case number(s) of the bankruptcy proceeding(s)," and "if available, the name, telephone number, physical address, and email address for the

debtor's attorney in the bankruptcy proceeding(s)." MCR 2.421(D)(1)-(3).

After a notice of bankruptcy proceeding is filed, "the court may hold in abeyance any further proceedings and may schedule a status conference to consider the administrative closure of all or a portion of the state court action." MCR 2.421(E). If "all or a portion of the state court action is administratively closed under [MCR 2.421(E)] or otherwise, it may be reopened if, on the motion of a party or on the court's own initiative, the court determines that the automatic stay has been lifted, removed, or otherwise no longer impairs adjudication of all or a portion of the state court action." *Id*.

Glossary

A

Acceleration clause

- "[A lease clause that p]rovides that rental payments may be accelerated if the rental agreement is breached by the tenant[.]" MCL 554.633(1)(i). The Truth in Renting Act prohibits acceleration clauses "unless the provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any." *Id*.

Actual and imminent threat

- For purposes of the Violence Against Women Act (VAWA), an *actual and imminent threat* is "a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: [t]he duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur." 24 CFR 5.2003.

Anti-lockout law

- A law that prohibits a landlord from unlawfully interfering with a tenant's possessory interest in the premises; the law prohibits a landlord from forcibly and unlawfully ejecting a tenant from leased premises. MCL 600.2918.

Appropriate agency

- For purposes of the Violence Against Women Act (VAWA), *appropriate agency* means the Executive department (Department of Housing and Urban Development, Department of Agriculture, for example) responsible for the administration of the covered housing programs. 34 USC 12491(a)(2).

Article 7 of the PHC

- Article 7 of the PHC means Article 7 of the Public Health Code, MCL 333.7101 *et seq*. Article 7 is the controlled substances article.

Automated payment

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *automated payment* "means an electronic payment method authorized by the [S]tate [C]ourt [A]dministrative [O]ffice at the direction of the [S]upreme [C]ourt, including, but not limited to, payments made with credit and debit cards." MCL 600.1985(b).

B

Board of health

- For purposes of the Michigan Housing Law, whenever the words *board of health* occur in the Michigan Housing Law "they shall be construed as if followed by the words 'of the city or village in which the dwelling is situated[,]'" and "such words shall be deemed and construed to mean the official or officials in any city or village to whom is committed the charge of safeguarding the public health." MCL 125.402(19).

Building

- For purposes of the Housing Law of Michigan, whenever the word *building* is used, it "shall be construed as if

followed by the words 'or any part thereof.'" MCL 125.402(19).

C

Cannabis regulatory agency

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *cannabis regulatory agency* "means the marijuana regulatory agency created under Executive Reorganization Order No. 2019-2, MCL 333.27001, renamed the cannabis regulatory agency under Executive Reorganization Order No. 2022-1, MCL 333.27002." MCL 333.27953(a).

Civil action

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *civil action* "means an action that is not a criminal case, a civil infraction action, a proceeding commenced in the probate court under . . . MCL 700.3982, or a proceeding involving a juvenile under . . . MCL 712A.1 to [MCL] 712A.32." MCL 600.1985(c).

Classes of dwellings

- For purposes of the Housing Law of Michigan, "dwellings are divided into the following classes: (a) private dwellings, (b) 2 family dwellings, and (c) multiple dwellings." MCL 125.402(2) (quotation marks omitted).

Clerk

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *clerk* "means the clerk of the court referenced in the rules of the [S]upreme [C]ourt and includes the clerk of the [S]upreme [C]ourt, chief clerk of the [C]ourt of [A]ppeals, county clerk, probate register, district court clerk, or clerk of the [C]ourt of [C]laims where the civil action is commenced, as applicable." MCL 600.1985(d).

Constructive eviction

- Situation in which a landlord's conduct deprives a tenant of the beneficial use and enjoyment of all or part of the leased premises. MCL 600.2918.

Consumer Protection Act (CPA)

- A law that prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. *Trade or commerce* includes the rental or leasing of real property. MCL 445.903(1); MCL 445.902(1)(g).

Cooperative

- A nonprofit corporation that owns or controls the housing/ related community facilities where the members of the corporation live. MCL 125.1411(*l*).

Covenants of fitness and repair (habitability covenants)

- Statutory covenants requiring a landlord to (1) keep the premises fit for the use intended, (2) keep the premises in reasonable repair, and (3) comply with applicable health and safety laws. MCL 554.139.

Covered housing program

- Any of the housing programs to which the Violence Against Women Act (VAWA) applies. Those programs are: Section 202 Housing Program for the elderly; Section 811 Housing Program for people with disabilities; HOME Housing Program; Section 221 Housing Program (below market interest rates); Section 236 Housing Program (interest reduction payments); Public Housing; Section 8 Housing Programs (project-based and tenant-based); Section 515 Rural Housing Program; Low Income Housing Tax Credit Program, and Housing Program for People With HIV/AIDS (HOPWA). 34 USC 12491(a)(3).

Covered person

- For purposes of most types of subsidized housing, *covered person* means the tenant, a member of the tenant's household, a guest, or other person under the tenant's control. See 24 CFR 5.100.

Cultivate

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *cultivate* "means to propagate, breed, grow, harvest, dry, cure, or separate parts of a

marihuana plant by manual or mechanical means." MCL 333.27953(b).

D

Damage

- For purposes of MCL 600.3238, *damage* "includes, but is not limited to, any of the following:

  (a) The failure to comply with local ordinances regarding maintenance of the property or blight prevention, if the failure is the subject of enforcement action by the appropriate governmental unit.

  (b) An exterior condition that presents a significant risk to the security of the property or significant risk of criminal activity occurring on the property.

  (c) Stripped plumbing, electrical wiring, siding, or other metal material.

  (d) Missing or destroyed structural aspects or fixtures, including, but not limited to, a furnace, water heater, air-conditioning unit, countertop, cabinetry, flooring, wall, ceiling, roofing, toilet, or any other fixtures. As used in this subdivision, 'fixtures' means that term as defined in . . . MCL 440.9102.

  (e) Deterioration below, or being in imminent danger of deteriorating below, community standards for public safety and sanitation that are established by statute or local ordinance.

  (f) A condition that would justify recovery of the premises under [MCL 600.5714(1)(d)]." MCL 600.3238(11).

Disability

- For purposes of the Persons With Disabilities Civil Rights Act (PWDCRA), *disability* is "[a] determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder," that "substantially limits 1 or more of [an] individual's major life activities and is unrelated to the

individual's ability to acquire, rent, or maintain property." MCL 37.1103(d)(i)(D).

Document

- For purposes of MCL 600.5718, *document* "means a digital image of a record originally produced on paper or originally created by an electronic means, the output of which is readable by sight and can be printed to paper." MCL 600.5718(3)(a).

Dwelling

- For purposes of the Housing Law of Michigan, *dwelling* "is any house, building, structure, tent, shelter, trailer or vehicle, or portion thereof, (except railroad cars, on tracks or rights-of-way) which is occupied in whole or in part as the home, residence, living or sleeping place of 1 or more human beings, either permanently or transiently. A house trailer or other vehicle, when occupied or used as a dwelling, shall be subject to all the provisions of this act, except that house trailers or other vehicles, duly licensed as vehicles, may be occupied or used as a dwelling for reasonable periods or lengths of time, without being otherwise subject to the provisions of this act for dwellings, when located in a park or place designated or licensed for the purpose by the corporate community within which they are located: Provided, That such parking sites are equipped with adequate safety and sanitary facilities." MCL 125.402(1). Additionally, whenever the word *dwelling* is used, it "shall be construed as if followed by the words 'or any part thereof.'" MCL 125.402(19).

E

Electronic filing system

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *electronic filing system* "means a system authorized after [January 1, 2016] by the [S]upreme [C]ourt for the electronic filing of documents using a portal contracted for by the [S]tate [C]ourt [A]dministrative [O]ffice for the filing of documents in the [S]upreme [C]ourt, [C]ourt of [A]ppeals, circuit court, probate court, district court, and [C]ourt of [C]laims." MCL 600.1985(f).

Electronic filing system fee

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *electronic filing system fee* "means the fee described in [MCL 600.1986]." MCL 600.1985(g).

Electronic notification

- For purposes of MCL 600.5718, *electronic notification* "means the notification to a person that a document is served by sending an electronic message to the electronic service address at or through which the person has authorized electronic service, specifying the exact name of the document served or providing a hyperlink at which the served document can be viewed and downloaded, or both." MCL 600.5718(3)(b).

Electronic service

- For purposes of MCL 600.5718, *electronic service* "means service of a document on a person by either electronic transmission or electronic notification." MCL 600.5718(3)(c).

Electronic service address

- For purposes of MCL 600.5718, *electronic service address* "of a person means the electronic address at or through which the person has authorized electronic service." MCL 600.5718(3)(d).

Electronic transmission

- For purposes of MCL 600.5718, *electronic transmission* "means the transmission of a document by electronic means to the electronic service address at or through which a person has authorized electronic service." MCL 600.5718(3)(e).

Elliott-Larsen Civil Rights Act (ELCRA)

- A law that prohibits discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, marital status, familial status, age, height, or weight in the opportunity to obtain housing. MCL 37.2101 *et seq*.

Enforcing agency

- For purposes of the Housing Law of Michigan, *enforcing agency* "means the designated officer or agency charged with responsibility for administration and enforcement of [the HLM]." MCL 125.402a.

F

Fair Housing Act (FHA)

- A federal law that prohibits a landlord from discriminating against any person in the rental or sale of housing based on that person's race, color, religion, sex, disability, familial status, or national origin. 42 USC 3601 *et seq*. The FHA applies to most dwellings. See 42 USC 3603(a)(2); 42 USC 3603(b)(1)-(2).

Familial status

- For purposes of the Elliott-Larsen Civil Rights Act, *familial status* means "[one] or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, 'parent' includes an individual who is pregnant." MCL 37.2103(e).

- For purposes of the Fair Housing Act (FHA), *familial status* means "one or more individuals (who have not attained the age of 18 years) being domiciled with (1) a parent or another person having legal custody of such individual or individuals[,] or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person." 42 USC 3602(k). "The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years." *Id*.

Final judgment

- For purposes of MCR 2.614, *final judgment* means that term as defined in MCR 7.202(6). MCR 2.614(A)(1). MCR 7.202(6)(a) defines *final judgment* in a civil case as:

(*i*) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;

(*ii*) an order designated as final under MCR 2.604(B);

(*iii*) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile;

(*iv*) a postjudgment order awarding or denying attorney fees and costs under court rule or other law;

(*v*) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity; or

(*vi*) in a foreclosure action involving a claim for remaining proceeds under MCL 211.78t, a postjudgment order deciding the claim.

- MCR 7.202(6)(b) defines *final judgment* in a criminal case as:

  (*i*) an order dismissing the case;

  (*ii*) the original sentence imposed following conviction;

  (*iii*) a sentence imposed following the granting of a motion for resentencing;

  (*iv*) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; or

  (*v*) a sentence imposed following revocation of probation.

G

Gender identity or expression

- For purposes of the Elliott-Larsen Civil Rights Act (ELCRA), *gender identity or expression* "means having or being perceived as having a gender-related self-identity or

expression whether or not associated with an individual's assigned sex at birth." MCL 37.2103(f).

H

Housing Law of Michigan (HLM)

- In general, a state law applicable to residential buildings that contains "the minimum requirements adopted for the protection of health, welfare and safety of the community." MCL 125.408. Communities are not required to adopt the HLM; communities may adopt all or part of the HLM or enact ordinances or regulations that provide similar or greater protections than those contained in the HLM. *Id.*; MCL 125.543.

I

Industrial hemp

- For purposes of Article 7 of the PHC, *industrial hemp* "means that term as defined in . . . MCL 333.27953." MCL 333.7106(2).

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *industrial hemp* "means any of the following:

  (*i*) A plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

  (*ii*) A part of a plant of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

  (*iii*) The seeds of a plant of the genus *Cannabis* with a THC concentration of 0.3% or less on a dry-weight basis.

  (*iv*) If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of any of the following:

(A) A plant of the genus *Cannabis*.

(B) A part of a plant of the genus *Cannabis*.

(*v*) A product to which 1 of the following applies:

(A) If the product is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:

(I) Has a THC concentration of 0.3% or less on a dry-weight or per volume basis.

(II) Contains a total amount of THC that is less than or equal to the limit established by the cannabis regulatory agency under [MCL 333.27958(1)(n)].

(B) If the product is not intended for human or animal consumption, the product meets both of the following requirements:

(I) Contains a substance listed in subparagraph (i), (ii), (iii), or (iv).

(II) Has a THC concentration of 0.3% or less on a dry-weight basis." MCL 333.27953(f).

L

Landlord

- For purposes of the Landlord-Tenant Relationship Act (LTRA) and the Elliott-Larsen Civil Rights Act (ELCRA), *landlord* "means any of the following:

(*i*) The owner, lessor, or sublessor of a rental unit or the property of which it is a part.

(*ii*) A person authorized to exercise any aspect of the management of the premises, including a person that, directly or indirectly, acts as a rental agent or receives rent, other than as a bona fide purchaser, and that has no obligation to deliver the receipts to another person." MCL 554.601(a); MCL 37.2502(6).

Landlord-Tenant Relationship Act (LTRA)

- A law that regulates the practices and procedures related to the collection, holding, and return of a tenant's security deposit. See MCL 554.601 *et seq*.

Lease

- For purposes of the Summary Proceedings Act, *lease* includes "a written or verbal lease or license agreement for use or possession of premises." MCL 600.5701(c).

Low income families

- For purposes of 42 US Code Chapter 8, "[t]he term 'low-income families' means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes." 42 USC 1437a(b)(2)(A).

- For purposes of 42 US Code Chapter 8, "[t]he term 'very low-income families' means low-income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes." 42 USC 1437a(b)(2)(B).

- For purposes of 42 US Code Chapter 8, "[t]he term extremely low-income families means very low-income families whose incomes do not exceed the higher of—

  - (*i*) the poverty guidelines updated periodically by the Department of Health and Human Services under the authority of [42 USC 9902(2)] applicable to a family of the size involved (except that this clause shall not apply in the case of public housing agencies or projects located in Puerto Rico or any other territory or possession of the United States); or

  - (*ii*) 30 percent of the median family income for the area, as determined by the Secretary, with adjustments for

smaller and larger families (except that the Secretary may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes)." 42 USC 1437a(b)(2)(C).

M

Marijuana/Marihuana

- For purposes of Article 7 of the PHC, the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, and the Marihuana Tracking Act, *marijuana* or *marihuana* "means that term as defined in . . . MCL 333.27953." MCL 333.7106(4); MCL 333.26423(e); MCL 333.27102(k); MCL 333.27902(d).

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marijuana* or *marihuana* "means any of the following:

  (i) A plant of the genus Cannabis, whether growing or not.

  (ii) A part of a plant of the genus Cannabis, whether growing or not.

  (iii) The seeds of a plant of the genus Cannabis.

  (iv) Marihuana concentrate.

  (v) A compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the following:

    (A) A plant of the genus Cannabis.

    (B) A part of a plant of the genus Cannabis.

    (C) The seeds of a plant of the genus Cannabis.

    (D) Marihuana concentrate.

  (vi) A marihuana-infused product.

  (vii) A product with a THC concentration of more than 0.3% on a dry-weight or per volume basis in the form in which it is intended for sale to a consumer.

> (viii) A product that is intended for human or animal consumption and that contains, in the form in which it is intended for sale to a consumer, a total amount of THC that is greater than the limit established by the cannabis regulatory agency under [MCL 333.27958(1)(n)]." MCL 333.27953(h).
>
> Marihuana "[e]xcept for marihuana concentrate extracted from any of the following . . . does not include any of the following:
>
> > (*i*) The mature stalks of a plant of the genus *Cannabis*.
> >
> > (*ii*) Fiber produced from the mature stalks of a plant of the genus *Cannabis*.
> >
> > (*iii*) Oil or cake made from the seeds of a plant of the genus *Cannabis*.
> >
> > (*iv*) A compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks of a plant of the genus *Cannabis*.
> >
> > (*v*) Industrial hemp.
> >
> > (*vi*) An ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
> >
> > (*vii*) A drug for which an application filed in accordance with 21 USC 355 is approved by the Food and Drug Administration." MCL 333.27953(i).

Marihuana accessories

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marihuana accessories* "means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body." MCL 333.27953(j).

Marihuana concentrate

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marihuana concentrate* "means the resin extracted from any part of a plant of the genus *Cannabis*." MCL 333.27953(k).

Marihuana-infused product

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marihuana-infused product* "means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption." MCL 333.27953(n).

Military service

- For purposes of MCL 600.3185, *military service* means:
  - "[a]ctive duty[,]" or
  - "[i]f the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money[,]" or
  - an absence from active duty due to "sickness, wounds, leave, or other lawful cause." MCL 600.3185(3)(b)(*i*)-(*iii*).
- For purposes of the Servicemembers Civil Relief Act, *military service* means:
  - "(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard—
    - (*i*) active duty, as defined in [10 USC 101(d)(1) ('[t]he term "active duty" means full-time duty in the active military service of the United States, including sustained duty in the Space Force')], and
    - (*ii*) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under [32 USC 502(f)] for purposes of responding to a national emergency declared by the President and supported by Federal funds;

- (B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

- (C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause." 50 USC 3911(2).

Multiple dwelling

- For purposes of the Housing Law of Michigan, *multiple dwelling* means "a dwelling occupied otherwise than as a private dwelling or 2 family dwelling." MCL 125.402(2)(c). Additionally, whenever the word *multiple dwelling* is used, it "shall be construed as if followed by the words 'or any part thereof.'" MCL 125.402(19).

O

Order of eviction (writ of restitution)

- "[A] writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following: (a) Leaving the property in an area open to the public or in the public right-of-way. (b) Delivering the property to the sheriff as authorized by the sheriff." MCL 600.5744(1).

Ordinance

- For purposes of the Housing Law of Michigan, *ordinance* "shall be construed as if followed by the words 'of the city or village in which the dwelling is situated.'" MCL 125.402(19).

Owner

- For purposes of MCL 600.2918 (anti-lockout law), an *owner* is "the owner, lessor, or licensor [of the premises] or an agent of the owner, lessor, or licensor." MCL 600.2918(9).

P

Participant

- For purposes of MCR 4.202(H)(3), *participant* is defined in MCR 2.407(A)(1). MCR 2.407(A)(1) states that *participants* "include, but are not limited to, parties, counsel, and subpoenaed witnesses, but do not include the general public."

Party

- For purposes of Chapter 19A of the Revised Judicature Act of 1961, *party* "means the person or entity commencing a civil action." MCL 600.1985(h).

Person

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *person* "means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity." MCL 333.27953(w).

- For purposes of the Elliott-Larsen Civil Rights Act (ELCRA) and the Landlord-Tenant Relationship Act (LTRA), *person* "means an individual, partnership, corporation, association, limited liability company, or any other legal entity." MCL 37.2502(4)(a); MCL 554.601c(2)(a).

Persons With Disabilities Civil Rights Act (PWDCRA)

- A law that prohibits housing discrimination on the basis of disability. MCL 37.1101 *et seq*.

Plant

- For purposes of the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act, *plant* "means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material." MCL 333.26423(k); MCL 333.27102(u).

Premises

- For purposes of the Summary Proceedings Act, *premises* means "lands, tenements, condominium property, cooperative apartments, air rights and all manner of real property. It includes structures fixed or mobile, temporary or permanent, vessels, mobile trailer homes and vehicles which are used or intended for use primarily as a dwelling or as a place for commercial or industrial operations or storage." MCL 600.5701(b).

- For purposes of governmentally subsidized housing, *premises* means "the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds." 24 CFR 5.100.

- For purposes of the Michigan Housing Law, whenever the word *premises* is used, it "shall be construed as if followed by the words 'or any part thereof.'" MCL 125.402(19).

Private dwelling

- For purposes of the Housing Law of Michigan, *private dwelling* means "a dwelling occupied by but 1 family, and so designed and arranged as to provide cooking and kitchen accommodations for 1 family only." MCL 125.402(2)(a).

Process/Processing

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *process* or *processing* "means to separate or otherwise prepare parts of a marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products." MCL 333.27953(x).

Project-based subsidized housing

- "[R]ental assistance . . . that is attached to the [housing] structure"; the subsidy does not travel with the person eligible for assistance. 42 USC 1437f(f)(6); 24 CFR 982.1(b)(1).

Public Housing Agency (PHA)

- "[A]ny State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these

entities, that is authorized to engage or assist in the development or operation of low[]income housing under the [United States Housing Act, 42 USC 1437 *et seq*.]." 24 CFR 5.100. PHAs are called housing commissions in Michigan.

Public hall

- For purposes of the Michigan Housing Law, *public hall* means "a hall, corridor or passageway not within the exclusive control of 1 family." MCL 125.402(10).

Public housing

- "[H]ousing assisted under the [United States Housing Act of 1937], other than under Section 8." 24 CFR 5.100. Also, *public housing* is decent, safe, rental housing, supported by government funding, for eligible low income families and individuals, the elderly, and people with disabilities. *HUD Public Housing Program*, at https://www.hud.gov/topics/rental_assistance/phprog.

Q

Qualified person with a disability

- For purposes of the Michigan Condominium Act, a *qualified person with a disability* is "a person who is a resident of a qualified conversion condominium project and paraplegic, quadriplegic, hemiplegic, or blind as that term is defined in . . . MCL 206.504." MCL 559.204b(1)(b).

Qualified senior citizen

- For purposes of the Michigan Condominium Act, a *qualified senior citizen* is a person who meets both of the following requirements:

  - "(*i*) A resident, on October 10, 1980, of a unit in a qualified conversion condominium project who on or after June 1, 1980, was a party to an oral or written agreement to pay less than $450.00 monthly rent for an apartment in the project having 1 bedroom or less, or less than $500.00 monthly rent for an apartment in the project having 2 or more bedrooms.

- (*ii*) Sixty-five years of age or older on October 10, 1980." MCL 559.204b(1)(c).

- For purposes of mobile home conversion condominium projects, a *qualified senior citizen* is a person "who is all of the following:

  - (*i*) On the date that notice is given under [MCL 559.222b](1), the owner and resident of a mobile home in a mobile home conversion condominium project containing 6 or more mobile homes.

  - (*ii*) A party to an oral or written agreement providing for the rental of the lot on which a mobile home described in subparagraph (*i*) is located.

  - (*iii*) Sixty-five years of age or older on the date that notice is given under [MCL 559.222b](1)." MCL 559.222b(10)(a).

R

Race

- For purposes of the Elliott-Larsen Civil Rights Act (ELCRA), *race* "is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. For purposes of this definition, 'protective hairstyles' includes, but is not limited to, such hairstyles as braids, locks, and twists." MCL 37.2103(j).

Real estate transaction

- For purposes of the Persons With Disabilities Civil Rights Act, *real estate transaction* "means the sale, exchange, rental, or lease of real property, or an interest therein." MCL 37.1501(d).

- For purposes of the Elliott-Larsen Civil Rights Act (ELCRA), *real estate transaction* "means the sale, exchange, rental, or lease of real property, or an interest in real property." MCL 37.2501(b).

Real property

- For purposes of the Persons With Disabilities Civil Rights Act, *real property* "includes a building, structure, mobile home, real estate, land, mobile home park, trailer park,

tenement, leasehold, or an interest in a real estate cooperative or condominium." MCL 37.1501(e).

- For purposes of the Elliott-Larsen Civil Rights Act, *real property* "includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium." MCL 37.2501(a).

Redemption period

- A specific period of time after a mortgage foreclosure during which the mortgagor, his or her heirs, or a person with a recorded interest in the property claiming under one of those individuals may redeem the property by paying the amount bid for the property at the foreclosure sale, with interest at the rate set by the mortgage, plus other costs for which the mortgagor would have been responsible had the mortgagee not foreclosed, plus interest on those costs. MCL 600.3240(1)-(2); MCL 600.3240(4) (foreclosures by advertisement).

- There is also a *redemption period* in cases involving land contract foreclosures. MCL 600.3140(2) (judicial foreclosures).

- See MCL 600.5744(4) for the redemption periods applicable to land contract forfeitures.

Regulation

- For purposes of the Housing Law of Michigan, *regulation* "shall be construed as if followed by the words 'of the city or village in which the dwelling is situated.'" MCL 125.402(19).

Related entity

- For purposes of the Elliott-Larsen Civil Rights Act (ELCRA) and the Landlord-Tenant Relationship Act (LTRA), *related entity* "means a person that, directly or indirectly, controls, is controlled by, or is under common control with another person." MCL 37.2502(4)(b); MCL 554.601c(2)(b).

Rental agreement

- For purposes of the Truth in Renting Act (TRA), *rental agreement* "means a written agreement embodying the terms and conditions concerning the use and occupancy of

residential premises, but does not include an agreement the terms of which are limited to 1 or more of the following: the identity of the parties, a description of the premises, the rental period, the total rental amount due, the amount of rental payments, and the times at which payments are due." MCL 554.632(a).

- For purposes of the Landlord-Tenant Relationship Act (LTRA), *rental agreement* "means an agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a rental unit." MCL 554.601(b).

Rental unit

- For purposes of the Landlord-Tenant Relationship Act (LTRA) and the Elliott-Larsen Civil Rights Act (ELCRA), *rental unit* "means a structure or part of a structure used as a home, residence, or sleeping unit by a single person or household unit, or any grounds, or other facilities or area promised for the use of a residential tenant. Rental unit includes, but is not limited to, apartment units, boarding houses, rooming houses, mobile home spaces, and single and 2-family dwellings." MCL 554.601(c); MCL 37.2502(6).

Repair and deduct

- The process by which a tenant may make necessary repairs to the premises and deduct the cost of those repairs from the rent due. See MCL 125.534(5) (statutory repair and deduct under the Housing Law of Michigan); *Anchor Inn of Mich, Inc v Knopman*, 71 Mich App 64, 67 (1976) (common-law repair and deduct).

Residential premises

- For purposes of the Truth in Renting Act, *residential premises* means "a house, building, structure, shelter, or mobile home, or portion thereof, used as a dwelling, home, residence, or living place by 1 or more human beings. 'Residential premises' includes an apartment unit, a boardinghouse, a rooming house, a mobile home, a mobile home space, and a single or multiple family dwelling, but does not include a hotel, a motel, motor home, or other tourist accommodation, when used as a temporary accommodation for guests or tourists, or premises used as the principal place of residence of the owner and rented

occasionally during temporary absences including vacation or sabbatical leave." MCL 554.632(b).

Retaliatory eviction

- Occurs when a landlord attempts to terminate a person's tenancy and obtain a possession judgment against the person to penalize the person for (1) attempting to enforce rights under the lease provisions or under the law, (2) complaining of code violations to a governmental agency, (3) engaging in lawful conduct arising from the tenancy, including conduct related to the person's membership in a tenant's organization, or (4) failing to comply with increased obligations imposed on the person by the landlord as a consequence of the person's lawful conduct. MCL 600.5720(1)(a)-(c); MCL 600.5720(1)(e).

Rooming house

- For purposes of the Housing Law of Michigan, *rooming house* "shall be construed to mean any dwelling occupied in such a manner that certain rooms, in excess of those used by the members of the immediate family and occupied as a home or family unit, are leased or rented to persons outside of the family, without any attempt to provide therein or therewith, cooking or kitchen accommodations for individuals leasing or renting rooms. In the case of single and 2 family dwellings the number of such bedrooms leased or rented to roomers shall not exceed 3, unless such dwellings be made to comply in all respects with the provisions of this act relating to multiple dwellings." MCL 125.402(3a).

S

Section 504

- "Section 504 of the Rehabilitation Act of 1973 [is a federal law that] prohibits discrimination on the basis of disability in programs and activities conducted by HUD [(Department of Housing and Urban Development)] or that receive financial assistance from HUD." HUD website, http://portal.hud.gov/hudportal/HUD?src=/programdescription/sec504.

Security deposit

- For purposes of the Landlord-Tenant Relationship Act (LTRA), *security deposit* means

> a deposit, in any amount, paid by the tenant to the landlord or the landlord's agent to be held for the term of the rental agreement, or any part of the term, and includes any required prepayment of rent other than the first full rental period of the lease agreement; any sum required to be paid as rent in any rental period in excess of the average rent for the term; and any other amount of money or property returnable to the tenant on condition of return of the rental unit by the tenant in condition as required by the rental agreement. [MCL 554.601(d).]

- *Security deposit* does not include "[a]n amount paid for an option to purchase, pursuant to a lease with an option to purchase, unless it is shown the intent was to evade [the LTRA, or an] amount paid as a subscription for or purchase of a membership in a cooperative housing association incorporated under the laws of this state." MCL 554.601(d).

Senior citizen housing

- For purposes of the Landlord-Tenant Relationship Act (LTRA), *senior citizen housing* "means housing for individuals 62 years of age or older that is subsidized in whole or in part under any local, state, or federal program." MCL 554.601(e).

Serious and imminent hazard

- For purposes of MCL 125.532, *serious and imminent hazard* means "a dangerous condition in a premises that could reasonably be expected to cause death or serious bodily harm to the occupants of the premises if that dangerous condition is not immediately corrected by the owner." MCL 125.532(6).

Servicemember

- For purposes of MCL 600.3285, *service member* means "an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard." MCL 600.3285(5)(d).

- For purposes of the Servicemembers Civil Relief Act (SCRA), *servicemember* means "a member of the uniformed

services[.]" 50 USC 3911(1). *Uniformed services* means "(A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service." 10 USC 101(a)(5). *Armed forces* means "the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard." 10 USC 101(a)(4).

Servicemembers Civil Relief Act (SCRA)

- Formerly the Soldiers' and Sailors' Civil Relief Act, the SCRA is a federal law that "provide[s] for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." See 50 USC 3902(2).

Sexual orientation

- For purposes of the Elliott-Larsen Civil Rights Act, *sexual orientation* "means having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation." MCL 37.2103(*l*).

Shall

- For purposes of the Michigan Housing Law, *shall* "is always mandatory and not directory, and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling." MCL 125.402(19).

Source of income

- For purposes of the Landlord-Tenant Relationship Act (LTRA) and the Elliott-Larsen Civil Rights Act (ELCRA), *source of income* "includes benefits or subsidy programs including housing assistance, housing choice vouchers provided under 42 USC 1437f, public assistance, veterans' benefits, Social Security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. Source of income does not include either of the following:

  (i) Income that a prospective tenant cannot demonstrate is derived from sources and activities permitted by law and is provided on an ongoing basis.

(ii) Housing assistance that is not approved by the appropriate agency within 30 days after the landlord provides all information required as a condition of the agency's approval, including evidence that all repairs required before occupancy have been completed." MCL 554.601(f); MCL 37.2501(e).

Statute of frauds

- For purposes of landlord-tenant rental agreements, the statute of frauds requires any lease for a term exceeding one year to be in writing. MCL 566.106; MCL 566.108.

T

Tenant

- For purposes of the Landlord-Tenant Relationship Act (LTRA) and the Elliott-Larsen Civil Rights Act (ELCRA), *tenant* means "an individual who occupies a rental unit for residential purposes with the landlord's consent for an agreed upon consideration." MCL 554.601(g); MCL 37.2502(6).

Tenant-based subsidized housing

- "[R]ental assistance . . . that provides for the eligible family to select suitable housing and to move to other suitable housing." 42 USC 1437f(f)(7); 24 CFR 982.1(b)(1)-(2). *Tenant-based subsidies* are portable and travel with the individual or family to whom the assistance is awarded.

Trade or commerce

- For the purposes of the Consumer Protection Act, *trade or commerce* includes the rental or leasing of real property. MCL 445.902(1)(g).

Truth in Renting Act (TRA)

- A law that applies only to written residential rental agreements; it outlines provisions that must be included in written residential rental agreements and provisions that are prohibited from inclusion. MCL 554.631 *et seq*.

Two family dwelling

- For purposes of the Housing Law of Michigan, *2 family dwelling* means "a dwelling occupied by but 2 families, and so designed and arranged as to provide cooking and kitchen accommodations for 2 families only." MCL 125.402(2)(b). Additionally, whenever the word *2 family dwelling* is used, it "shall be construed as if followed by the words 'or any part thereof.'" MCL 125.402(19).

V

Very low income families

- Low-income families whose annual incomes do not exceed 50 percent of the area median family income, adjusted for the size of the family. 42 USC 1437a(b)(2)(B).

Videoconferencing

- For purposes of subchapter 2.400 of the Michigan Court Rules, *videoconferencing* "means the use of an interactive technology, including a remote digital platform, that sends video, voice, and/or data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers. It includes use of a remote video platform through an audio-only option." MCR 2.407(A)(2).

Violence Against Women Act (VAWA)

- A federal law that protects victims of domestic violence, dating violence, sexual assault, or stalking from discrimination in covered housing programs. 34 USC 12491(b)(1).

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