

Real Estate Title Marketability, Encumbrances, Defects and Disputes.



Case Law Study and Legal Updates

Easements – Implied Easements

- Original owners divided and sold large parcels creating various hunting and recreational land parcels between 160 to 320 acres.
- Plaintiff had access to their large hunting property through federal land. They purchased knowing the only way to access was through federally controlled forest. The permit granting access expired and federal government closed land due to safety issues and recommended plaintiff pursue access through property to the east.
- Plaintiff filed action seeking easement by necessity.
- Primary Defendant opposed the route sought by Plaintiff (through a private pathway in the center leading to highway) due to privacy and disruption of family activities, and instead proposed alternate routes through his property.
- Court granted Plaintiff easement by necessity but through the norther and southern part, and not through the center. Plaintiff appealed stating MDEQ won't allow such a route due to norther and southern part being wetland.
- Court of Appeals affirmed the decision based upon equitable considerations for the owner of the servient estate.

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Title Insurance Coverage

- The Roses claimed that plaintiffs did not have an easement and alleged that plaintiffs illegally trespassed on their property, spun the tires of a pickup truck while holding a middle finger up, caused damage to the Roses' septic field and trees, removed portions of the Roses' fence, planted vegetation, and placed cameras on the property line facing the Roses' house. The Roses filed an eight-count complaint against plaintiffs for quiet title, **trespass**, malicious destruction of property, conversion, negligence, invasion of privacy, **intentional infliction of emotional distress**, and injunctive relief. Plaintiffs sought indemnification from defendant for all counts, but defendant determined that it could defend against only counts I and VIII.
- Plaintiff was forced by insurance company to accept a settlement providing for reduced size of the easement.
- Plaintiffs argue that the circuit court erred by granting defendant's motion for summary disposition because counts II to VII of the Rose complaint were based on other covered risks in the insurance policy and were not specifically excluded
- You don't own "title" in the easement.
- In this case, there is no indication that defendant ever agreed to insure the size of the easement. Therefore, the circuit court did not err by holding that defendant did not owe plaintiffs a duty to compensate for the reduction of the easement.

Case Law Study and Legal Updates

Detroit Land Bank and Tax Foreclosure

- Detroit Land Bank looked to foreclose on Defendants properties due to unpaid taxes.
- Defendant claimed he was going through hardship and on disability. He wanted to enter the “buy back” program, but was unable to bring the evidence needed or retain counsel at the second hearing resulting in Wayne county Treasurer acquiring the property through tax foreclosure.
- Defendant contends that the trial court erred in quieting title
- to the property in favor of plaintiff because he complied with
- the requirements of the buy-back program, the tax assessment was illegal and inflated, and plaintiff was motivated to sell the Townsend home for profit. We disagree.

Case Law Study and Legal Updates

Marketable Title – 18th Hole Not Owned by Golf Course?

- In 1955, New Products Corporation (“New Products”) acquired the parcel and paid property taxes that were assessed by Benton Harbor; however, at the same time, Benton Township was assessing property taxes on the same parcel to an individual named Frank Hoffman, and the State of Michigan eventually “acquired” the parcel due to Frank Hoffman’s failure to pay those taxes. In 1973, the State of Michigan deeded the property back to Frank Hoffman, and by 2007, Harbor Shores Golf Course, LLC (“Harbor Shores”) “acquired” a portion of the parcel.
- New Products on one side, who actually owned the disputed parcel, and Harbor Shores on the other, who had a chain of title claiming ownership of the parcel dating back to at least 1971.
- New Harbor placed the 18th hole on the property.
- Court of Appeals affirmed lower court decision that New Products could no longer assert its right because it waited until after the golf course opened. (laches, unclean hands and estoppel defense)

Case Law Study and Legal Updates

Marketable Title

- **565.102 Unbroken chain of title to interest in land; conditions. Sec. 2.**
- (1) A person is considered to have an unbroken chain of title to an interest in land as provided in section 1 if the official public records disclose either of the following:
 - b) A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance or other title transaction purports to create the interest in some other person and other conveyances or title transactions of record by which the purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of the purported interest.
- (2) For purposes of this section, except as to mineral interests, a conveyance or other title transaction in the chain of title purports to divest an interest in the property only if it creates the divestment or if it specifically refers by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment.

Case Law Study and Legal Updates

National Secure Notarization Act

- Among the laws passed in December 2020 was PA 336 of 2020 which gives options for notarizing real estate documents during the COVID-19 pandemic.
- The law extends until July 1, 2021 the commission of Michigan notaries that expired after March 1, 2020 and before June 30, 2021.
- PA 336 authorizes using audio-visual notarization (“AVN”) through June 30, 2021. With AVN, the signer has paper copies of the documents to be notarized and signs them in front of a Michigan notary using two-way, real-time audiovisual technology (“2WRTAVT”—we have all used this technology the last several months!)
- AVN is different from remote online notarization (“RON”) and in-person electronic notarization (“IPEN”). RON involves the signer and notary electronically signing digital records, in a virtual closing room, using one of the platforms approved by the Michigan Secretary of State. IPEN is the same as RON, except the signer and notary are physically together, using the same device.



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