

**CHAPTER 554. REAL AND PERSONAL PROPERTY
REVISED STATUTES OF 1846**

CHAPTER 62

Chapter 62. Of The Nature And Qualities Of Estates In Real And Personal Property, And The Alienation
Thereof.

554.1 Estates in lands; kinds as respects length of enjoyment.

Sec. 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

History: R.S. 1846, Ch. 62;—CL 1857, 2585;—CL 1871, 4068;—How. 5517;—CL 1897, 8783;—CL 1915, 11519;—CL 1929, 12921;—CL 1948, 554.1.

554.2 Estate of inheritance; fee simple.

Sec. 2. Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute, or an absolute fee.

History: R.S. 1846, Ch. 62;—CL 1857, 2586;—CL 1871, 4069;—How. 5518;—CL 1897, 8784;—CL 1915, 11520;—CL 1929, 12922;—CL 1948, 554.2.

554.3 Estate of inheritance; fee tail; abolition, declaration as fee simple.

Sec. 3. All estates tail are abolished, and every estate which would be adjudged a fee tail, according to the law of the territory of Michigan, as it existed before the second day of March, 1821, shall for all purposes be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

History: R.S. 1846, Ch. 62;—CL 1857, 2587;—CL 1871, 4070;—How. 5519;—CL 1897, 8785;—CL 1915, 11521;—CL 1929, 12923;—CL 1948, 554.3.

Former law: See Act of March 2, 1821; Code of 1820, p. 393; 1 Terr. Laws 815; and Revision of 1827, p. 261.

554.4 Estate of inheritance; remainder in fee after a fee tail; validity.

Sec. 4. When a remainder in fee shall be limited upon any estate which would be adjudged a fee tail according to the law of the territory of Michigan as it existed previous to the time mentioned in the preceding section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

History: R.S. 1846, Ch. 62;—CL 1857, 2588;—CL 1871, 4071;—How. 5520;—CL 1897, 8786;—CL 1915, 11522;—CL 1929, 12924;—CL 1948, 554.4.

554.5 Freehold estates; chattels real; chattel interests.

Sec. 5. Estates of inheritance and for life shall be denominated estates of freehold; estates for years shall be denominated chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

History: R.S. 1846, Ch. 62;—CL 1857, 2589;—CL 1871, 4072;—How. 5521;—CL 1897, 8787;—CL 1915, 11523;—CL 1929, 12925;—CL 1948, 554.5.

554.6 Estate for life of another; nature.

Sec. 6. An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

History: R.S. 1846, Ch. 62;—CL 1857, 2590;—CL 1871, 4073;—How. 5522;—CL 1897, 8788;—CL 1915, 11524;—CL 1929, 12926;—CL 1948, 554.6.

554.7 Estates in land; kinds as respects time of enjoyment.

Sec. 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

History: R.S. 1846, Ch. 62;—CL 1857, 2591;—CL 1871, 4074;—How. 5523;—CL 1897, 8789;—CL 1915, 11525;—CL 1929, 12927;—CL 1948, 554.7.

554.8 Estates in possession and in expectancy; definition.

Sec. 8. An estate in possession, is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to the possession is postponed to a future period.

History: R.S. 1846, Ch. 62;—CL 1857, 2592;—CL 1871, 4075;—How. 5524;—CL 1897, 8790;—CL 1915, 11526;—CL 1929, 12928;—CL 1948, 554.8.

12928;—CL 1948, 554.8.

554.9 Estates in expectancy; classifications.

Sec. 9. Estates in expectancy are divided into,
First. Estates commencing at a future day, denominated future estates; and,
Second. Reversions.

History: R.S. 1846, Ch. 62;—CL 1857, 2593;—CL 1871, 4076;—How. 5525;—CL 1897, 8791;—CL 1915, 11527;—CL 1929, 12929;—CL 1948, 554.9.

554.10 Future estate; definition.

Sec. 10. A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate, created at the same time.

History: R.S. 1846, Ch. 62;—CL 1857, 2594;—CL 1871, 4077;—How. 5526;—CL 1897, 8792;—CL 1915, 11528;—CL 1929, 12930;—CL 1948, 554.10.

554.11 Future estate; remainder.

Sec. 11. When a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

History: R.S. 1846, Ch. 62;—CL 1857, 2595;—CL 1871, 4078;—How. 5527;—CL 1897, 8793;—CL 1915, 11529;—CL 1929, 12931;—CL 1948, 554.11.

554.12 Reversion; definition.

Sec. 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: R.S. 1846, Ch. 62;—CL 1857, 2596;—CL 1871, 4079;—How. 5528;—CL 1897, 8794;—CL 1915, 11530;—CL 1929, 12932;—CL 1948, 554.12.

554.13 Future estates; classifications, definitions.

Sec. 13. Future estates are either vested or contingent:

They are vested when there is a person in being who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate.

They are contingent whilst the person to whom, or the event upon which they are limited to take effect remains uncertain.

History: R.S. 1846, Ch. 62;—CL 1857, 2597;—CL 1871, 4080;—How. 5529;—CL 1897, 8795;—CL 1915, 11531;—CL 1929, 12933;—CL 1948, 554.13.

554.14-554.20 Repealed. 1949, Act 38, Eff. Sept. 23, 1949.

Compiler's note: The repealed sections pertained to suspension of power of alienation; contingent remainder in fee on prior remainder in fee; successive life estates; remainders upon certain life estates; and contingent remainder on terms for years.

554.21 Repealed. 1988, Act 417, Imd. Eff. Dec. 27, 1988.

Compiler's note: The repealed section pertained to life estates.

554.22 Heirs and issue; construction as used in remainders.

Sec. 22. When a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issues" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

History: R.S. 1846, Ch. 62;—CL 1857, 2606;—CL 1871, 4089;—How. 5538;—CL 1897, 8804;—CL 1915, 11540;—CL 1929, 12942;—CL 1948, 554.22.

554.23 Repealed. 1949, Act 38, Eff. Sept. 23, 1949.

Compiler's note: The repealed section pertained to limitations of chattels real.

554.24 Estates to commence in future; estates in term for years.

Sec. 24. Subject to the rules established in the preceding sections of this chapter, a freehold estate, as well as a chattel real, may be created to commence at a future day, an estate for life may be created in a term of years, and a remainder limited thereon.

History: R.S. 1846, Ch. 62;—CL 1857, 2608;—CL 1871, 4091;—How. 5540;—CL 1897, 8806;—CL 1915, 11542;—CL 1929, 12944;—CL 1948, 554.24.

554.25 Alternative future estates.

Sec. 25. Two or more future estates may also be created to take effect in the alternative, so that if the first in order should fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

History: R.S. 1846, Ch. 62;—CL 1857, 2609;—CL 1871, 4092;—How. 5541;—CL 1897, 8807;—CL 1915, 11543;—CL 1929, 12945;—CL 1948, 554.25.

554.26 Future estates; validity as affected by probability of contingency.

Sec. 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

History: R.S. 1846, Ch. 62;—CL 1857, 2610;—CL 1871, 4093;—How. 5542;—CL 1897, 8808;—CL 1915, 11544;—CL 1929, 12946;—CL 1948, 554.26.

554.27 Remainder on contingency defeating prior estate; construction.

Sec. 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such a limitation would have by law.

History: R.S. 1846, Ch. 62;—CL 1857, 2611;—CL 1871, 4094;—How. 5543;—CL 1897, 8809;—CL 1915, 11545;—CL 1929, 12947;—CL 1948, 554.27.

554.28 Rule in Shelly's Case; abolition.

Sec. 28. When a remainder shall be limited to the heir, or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heir, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them.

History: R.S. 1846, Ch. 62;—CL 1857, 2612;—CL 1871, 4095;—How. 5544;—CL 1897, 8810;—CL 1915, 11546;—CL 1929, 12948;—CL 1948, 554.28.

554.29 Remainder not contingency defeating prior estate; construction.

Sec. 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency, defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

History: R.S. 1846, Ch. 62;—CL 1857, 2613;—CL 1871, 4096;—How. 5545;—CL 1897, 8811;—CL 1915, 11547;—CL 1929, 12949;—CL 1948, 554.29.

554.30 Posthumous child; right to take estate.

Sec. 30. When a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take, in the same manner as if born before the death of their parents.

History: R.S. 1846, Ch. 62;—CL 1857, 2614;—CL 1871, 4097;—How. 5546;—CL 1897, 8812;—CL 1915, 11548;—CL 1929, 12950;—CL 1948, 554.30.

554.31 Posthumous child; effect of birth on certain future estates.

Sec. 31. A future estate depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

History: R.S. 1846, Ch. 62;—CL 1857, 2615;—CL 1871, 4098;—How. 5547;—CL 1897, 8813;—CL 1915, 11549;—CL 1929, 12951;—CL 1948, 554.31.

554.32 Expectant estates; effect of alienation or destruction of precedent estate.

Sec. 32. No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger, or otherwise.

History: R.S. 1846, Ch. 62;—CL 1857, 2616;—CL 1871, 4099;—How. 5548;—CL 1897, 8814;—CL 1915, 11550;—CL 1929, 12952;—CL 1948, 554.32.

554.33 Expectant estates; authorized method of defeasance, effect on original validity.

Sec. 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means which the party creating such estate shall, in the creation thereof, have provided or authorized; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

History: R.S. 1846, Ch. 62;—CL 1857, 2617;—CL 1871, 4100;—How. 5549;—CL 1897, 8815;—CL 1915, 11551;—CL 1929, 12953;—CL 1948, 554.33.

554.34 Contingent remainder; effect of premature determination of precedent estate.

Sec. 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect in the same manner, and to the same extent, as if the precedent estate had continued to the same period.

History: R.S. 1846, Ch. 62;—CL 1857, 2618;—CL 1871, 4101;—How. 5550;—CL 1897, 8816;—CL 1915, 11552;—CL 1929, 12954;—CL 1948, 554.34.

554.35 Expectant estates; qualities.

Sec. 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

History: R.S. 1846, Ch. 62;—CL 1857, 2619;—CL 1871, 4102;—How. 5551;—CL 1897, 8817;—CL 1915, 11553;—CL 1929, 12955;—CL 1948, 554.35.

554.36 Rents and profits to accrue; disposition.

Sec. 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this chapter in relation to future estates in lands.

History: R.S. 1846, Ch. 62;—CL 1857, 2620;—CL 1871, 4103;—How. 5552;—CL 1897, 8818;—CL 1915, 11554;—CL 1929, 12956;—CL 1948, 554.36.

554.37, 554.38 Repealed. 1952, Act 6, Eff. Sept. 18, 1952.

Compiler's note: The repealed sections pertained to valid and invalid accumulations of rents and profits of real estate.

554.39, 554.40 Repealed. 1952, Act 7, Eff. Sept. 18, 1952.

Compiler's note: The repealed sections pertained to accumulation of rents and profits of real estate for benefit of infants entitled to expectant estate and of person entitled in absence of disposition of rents and profits of real estate.

554.41 Expectant estates; time of creation.

Sec. 41. The delivery of the grant, where an expectant estate is created by grant; and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

History: R.S. 1846, Ch. 62;—CL 1857, 2625;—CL 1871, 4108;—How. 5557;—CL 1897, 8823;—CL 1915, 11559;—CL 1929, 12961;—CL 1948, 554.41.

554.42 Expectant estates; abolition, exceptions.

Sec. 42. All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

History: R.S. 1846, Ch. 62;—CL 1857, 2626;—CL 1871, 4109;—How. 5558;—CL 1897, 8824;—CL 1915, 11560;—CL 1929, 12962;—CL 1948, 554.42.

554.43 Estates; kinds in respect to number and connection of owners; nature.

Sec. 43. Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

History: R.S. 1846, Ch. 62;—CL 1857, 2627;—CL 1871, 4110;—How. 5559;—CL 1897, 8825;—CL 1915, 11561;—CL 1929, 12963;—CL 1948, 554.43.

554.44 Land conveyance to two or more persons; estate created.

Sec. 44. All grants and devises of lands, made to 2 or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.

History: R.S. 1846, Ch. 62;—CL 1857, 2628;—CL 1871, 4111;—How. 5560;—CL 1897, 8826;—CL 1915, 11562;—CL 1929, 12964;—CL 1948, 554.44.

554.45 Land conveyance; exceptions to preceding section.

Sec. 45. The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

History: R.S. 1846, Ch. 62;—CL 1857, 2629;—CL 1871, 4112;—How. 5561;—CL 1897, 8827;—CL 1915, 11563;—CL 1929, 12965;—CL 1948, 554.45.

554.46 Land conveyance; nominal conditions; effect of failure to perform.

Sec. 46. When any conditions annexed to a grant or conveyance of lands are merely nominal and evince no intention of actual and substantial benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded, and a failure to perform the same shall in no case operate as a forfeiture of the lands conveyed subject thereto.

History: R.S. 1846, Ch. 62;—CL 1857, 2630;—CL 1871, 4113;—How. 5562;—CL 1897, 8828;—CL 1915, 11564;—CL 1929, 12966;—CL 1948, 554.46.

RULE AGAINST PERPETUITIES
Act 38 of 1949

AN ACT concerning perpetuities and the suspension of the absolute power of alienation with respect to interests in real property, making uniform the law as to real and personal property; and repealing sections 14, 15, 16, 17, 18, 19, 20 and 23 of chapter 62 of the Revised Statutes of 1846, being sections 554.14, 554.15, 554.16, 554.17, 554.18, 554.19, 554.20 and 554.23, respectively, of the Compiled Laws of 1948.

History: 1949, Act 38, Eff. Sept. 23, 1949.

The People of the State of Michigan enact:

554.51 Rule against perpetuities; applicability; uniformity.

Sec. 1. The common law rule known as the rule against perpetuities now in force in this state as to personal property shall hereafter be applicable to real property and estates and other interests therein, whether freehold or non-freehold, legal or equitable, by way of trust or otherwise, thereby making uniform the rule as to perpetuities applicable to real and personal property.

History: 1949, Act 38, Eff. Sept. 23, 1949.

554.52 Sections repealed.

Sec. 2. Sections 14, 15, 16, 17, 18, 19, 20 and 23 of chapter 62 of the Revised Statutes of 1846, being sections 554.14, 554.15, 554.16, 554.17, 554.18, 554.19, 554.20 and 554.23, respectively, of the Compiled Laws of 1948, concerning perpetuities and the suspension of the absolute power of alienation, are hereby repealed.

History: 1949, Act 38, Eff. Sept. 23, 1949.

554.53 Applicability of act to nonvested property interests.

Sec. 3. This act applies only to nonvested property interests created after September 23, 1949. Unless as otherwise provided by statute, this act shall not apply to nonvested property interests created on or after the effective date of the uniform statutory rule against perpetuities.

History: 1949, Act 38, Eff. Sept. 23, 1949;—Am. 1988, Act 417, Imd. Eff. Dec. 27, 1988.

POSSIBILITIES OF REVERTER AND RIGHTS OF ENTRY
Act 13 of 1968

AN ACT to limit the duration of possibilities of reverter and rights of entry in conveyances of real property in certain cases.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

The People of the State of Michigan enact:

554.61 Terminable interest, specified contingency; definitions.

Sec. 1. As used in this act:

(a) "Terminable interest" is a possessory or ownership interest in real property which is subject to termination by a provision in a conveyance or other instrument which either creates a right of reversion to a grantor or his heirs, successors or assigns or creates a right of entry on the occurrence of a specified contingency.

(b) "Specified contingency" is the event described in a conveyance or other instrument creating a terminable interest, the occurrence of which requires or permits the divesting of the terminable interest.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

554.62 Specified contingency; termination right; limitation period.

Sec. 2. If the specified contingency does not occur within 30 years after the terminable interest is created, the right of termination by reason of the specified contingency shall be unenforceable.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

554.63 Existing termination rights limitation.

Sec. 3. A right of termination under a terminable interest which was created prior to the effective date of this act is unenforceable if the specified contingency does not occur within 30 years after the terminable interest was created or within 1 year after the effective date of this act, whichever is later.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

554.64 Exemptions to act.

Sec. 4. This act does not apply:

- (a) To a lease for a term of years.
- (b) If the specified contingency must occur, if at all, within the period of the rule against perpetuities.
- (c) If the terminable interest is held for public, educational, religious or charitable purposes.
- (d) If the terminable interest is created in a conveyance from the United States of America, the state or any agency or political subdivision of either of them.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

554.65 Right of termination; preservation; notice, recording.

Sec. 5. A right of termination may be preserved by the recording, within a period of not less than 25 nor more than 30 years after creation of the terminable interest or within 1 year after the effective date of this act, whichever is later, of a written notice that the owner of such right of termination desires to preserve the same, such notice to be recorded in the register of deeds office of the county where the real property subject to such right of termination is located. Such notice shall be verified by oath, shall describe the land involved and the nature of such right of termination, including the specified contingency, and shall state the name and address of the owner of such right of termination. The recording of such notice shall operate to preserve such right of termination from the operation of this act for a period of 30 years from the date of recording of such notice.

History: 1968, Act 13, Imd. Eff. Mar. 29, 1968.

UNIFORM STATUTORY RULE AGAINST PERPETUITIES
Act 418 of 1988

AN ACT to adopt the uniform statutory rule against perpetuities.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

The People of the State of Michigan enact:

554.71 Short title.

Sec. 1. This act shall be known and may be cited as the “uniform statutory rule against perpetuities”.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

554.72 Nonvested property interest; general power of appointment, nongeneral power of appointment, or general testamentary power of appointment; validity; language measuring time period from creation of trust or other property arrangement.

Sec. 2. (1) Subject to section 5, a nonvested property interest is invalid unless 1 or more of the following are applicable to the interest:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.

(b) The interest either vests or terminates within 90 years after its creation.

(2) Subject to section 5, a general power of appointment not presently exercisable because of a condition precedent is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, the condition precedent is certain either to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive.

(b) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) Subject to section 5, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive.

(b) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement that was irrevocable on September 25, 1985, language in an instrument governing the effect of an exercise of a power of appointment over property exempt from federal generation skipping transfer tax (a) seeks to disallow the vesting or termination of any interest or trust beyond, (b) seeks to postpone the vesting or termination of any interest or trust until, or (c) seeks to operate in effect in any similar fashion upon, the later of (i) the expiration of a period of time ending with, or not exceeding 21 years after, the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988;—Am. 2008, Act 149, Imd. Eff. May 28, 2008.

554.73 Nonvested property interest or power of appointment; time of creation.

Sec. 3. (1) Except as provided in subsections (2), (3), and section 6(1), the time of creation of a nonvested property interest or a power of appointment shall be determined by statutory or common law.

(2) For purposes of this act, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 2(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

554.74 Reforming disposition; petition.

Sec. 4. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution that is within the 90 years allowed by section 2(1)(b), (2)(b), or (3)(b) and 1 or more of the following are applicable:

- (a) A nonvested property interest or a power of appointment becomes invalid under section 2.
- (b) A class gift is not but might become invalid under section 2 and the time has arrived when the share of any class member is to take effect in possession or enjoyment.
- (c) A nonvested property interest that is not validated by section 2(1)(a) can vest but not within 90 years after its creation.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

554.75 Applicability of MCL 554.72; "second power" defined.

Sec. 5. (1) Section 2 does not apply to any of the following:

- (a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a premarital or postmarital agreement; a separation or divorce settlement; a spouse's election; a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; a contract to make or not to revoke a will or trust; a contract to exercise or not to exercise a power of appointment; a transfer in satisfaction of a duty of support; or a reciprocal transfer.
- (b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.
- (c) A power to appoint a fiduciary.
- (d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.
- (e) A property interest, power of appointment, or any other arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute.
- (f) Except as provided in subsection (2), an interest or power of appointment to which the personal property trust perpetuities act, 2008 PA 148, MCL 554.91 to 554.94, applies.

(2) Section 2 is applicable to an interest or power of appointment to which the personal property trust perpetuities act, 2008 PA 148, MCL 554.91 to 554.94, applies if the interest or power was created, or property was made subject to the interest or power, by the exercise of a second power. If section 2 is applicable to an interest or power under this subsection, it applies only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) is satisfied, or whether to reform a disposition under section 4, a period of 360 years shall be used.

(3) As used in this section, "second power" means that term as defined in section 2 of the personal property trust perpetuities act, 2008 PA 148, MCL 554.92.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988;—Am. 2008, Act 149, Imd. Eff. May 28, 2008;—Am. 2011, Act 11, Imd. Eff. Mar. 24, 2011.

554.76 Nonvested property interest or power of appointment to which act applicable; violation of rule against perpetuities; reforming disposition.

Sec. 6. (1) This act applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this act. For purposes of this section, a nonvested property interest or power of appointment created by the exercise of a power of appointment is created when the power has been irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before the effective date of this act and is determined in a judicial proceeding, commenced on or after the effective date of this act, to violate the rule against perpetuities as it existed before the effective date of this act, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

554.77 Application and construction of act.

Sec. 7. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

554.78 Conditional effective date.

Sec. 8. This act shall not take effect unless House Bill No. 5626 of the 84th Legislature is enacted into law.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988.

Compiler's note: House Bill No. 5626, referred to in this section, was filed with the Secretary of State December 27, 1988, and became P.A. 1988, No. 417, Imd. Eff. Dec. 27, 1988.

PERSONAL PROPERTY TRUST PERPETUITIES ACT
Act 148 of 2008

AN ACT to exclude certain personal property held in trust from the rule against perpetuities and similar rules that potentially affect the duration of trusts.

History: 2008, Act 148, Imd. Eff. May 28, 2008.

The People of the State of Michigan enact:

554.91 Short title.

Sec. 1. This act shall be known and may be cited as the "personal property trust perpetuities act".

History: 2008, Act 148, Imd. Eff. May 28, 2008.

554.92 Definitions.

Sec. 2. As used in this act:

(a) "Fiduciary" means, with respect to a power of appointment, that the power is held by a trustee in a fiduciary capacity.

(b) "First power" means a nonfiduciary, nongeneral power of appointment over personal property held in trust that is exercised so as to subject the property to, or to create, another power of appointment.

(c) "Nonfiduciary" means, with respect to a power of appointment, that the power of appointment is not held by a trustee in a fiduciary capacity.

(d) "Second-order fiduciary power" means a fiduciary power of appointment that is created or has property subjected to it by the exercise of 1 of the following:

(i) A first power.

(ii) A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.

(iii) A fiduciary power of appointment whose creation or control over property subject to the power is traceable through a succession of previous exercises of fiduciary powers to the exercise of a fiduciary power that was created or had property subjected to it by the exercise of a first power.

(e) "Second power" means a power of appointment over personal property held in trust, other than a presently exercisable general power, that is created or to which property is subjected by the exercise of either a first power or a second-order fiduciary power.

(f) "Uniform statutory rule against perpetuities" means the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

History: 2008, Act 148, Imd. Eff. May 28, 2008;—Am. 2012, Act 484, Imd. Eff. Dec. 28, 2012.

554.93 Personal property held in trust; interest in or power of appointment over; validity; exercise of second power; determination under uniform statutory rule against perpetuities.

Sec. 3. (1) Except as provided in subsection (3), an interest in, or power of appointment over, personal property held in trust is not invalidated by a rule against any of the following:

(a) Perpetuities.

(b) Suspension of absolute ownership.

(c) Suspension of the power of alienation.

(d) Accumulations of income.

(2) Except as provided in subsection (3), all of the following may be indefinitely suspended, postponed, or allowed to go on with respect to personal property held in trust:

(a) The vesting of a future interest.

(b) The satisfaction of a condition precedent to the exercise of a general power of appointment.

(c) The exercise of a nongeneral or testamentary power of appointment.

(d) Absolute ownership.

(e) The power of alienation.

(f) Accumulations of income.

(3) The period during which the vesting of a future interest in property may be postponed by the exercise of a second power shall be determined under the uniform statutory rule against perpetuities by reference to the time of the creation of the power of appointment that subjected property to, or created, the second power. A nonvested interest, general power of appointment not presently exercisable because of a condition precedent, or nongeneral or testamentary power of appointment created, or to which property is subjected, by the exercise of the second power is invalid, to the extent of the exercise of the second power, unless the interest or

power satisfies the uniform statutory rule against perpetuities measured from the time of the creation of the power of appointment that subjected property to, or created, the second power.

History: 2008, Act 148, Imd. Eff. May 28, 2008;—Am. 2012, Act 484, Imd. Eff. Dec. 28, 2012.

554.94 Applicability of act to certain personal property; scope of trust.

Sec. 4. (1) This act applies only to a nonvested interest in, or power of appointment over, personal property held in a trust that is either revocable on, or created after, May 28, 2008, and only to the extent that the trust is not a special appointee trust.

(2) For purposes of this section, a trust is a special appointee trust to the extent it includes assets that were held in a trust that was irrevocable on September 25, 1985, if both of the following apply to the assets:

- (a) The assets have continuously been held in trust since September 25, 1985.
- (b) The assets have not become subject to a general power of appointment since September 25, 1985.

History: 2008, Act 148, Imd. Eff. May 28, 2008;—Am. 2011, Act 12, Imd. Eff. Mar. 24, 2011.

DEVOLUTION OF EXPECTANT ESTATES
Act 211 of 1931

AN ACT to declare the law governing the devolution of expectant estates and interests in real and personal property.

History: 1931, Act 211, Eff. Sept. 18, 1931.

The People of the State of Michigan enact:

554.101 Expectant estate in realty or personalty; death of owner prior to possession, effect.

Sec. 1. In all cases where the owner of an expectant estate, right or interest in real or personal property, shall die prior to the termination of the precedent or intermediate estate, if the contingency arises by which such owner would have been entitled to an estate in possession if living, his heirs at law if he died intestate, or his devisees or grantees and assigns if he shall have devised or conveyed such right or interest, shall be entitled to the same estate in possession.

History: 1931, Act 211, Eff. Sept. 18, 1931;—CL 1948, 554.101.

REVERSIONARY INTEREST IN LANDS
Act 219 of 1931

AN ACT to authorize the granting, assignment, transfer, conveyance or devise of the reversionary interest in lands conveyed on a condition subsequent.

History: 1931, Act 219, Eff. Sept. 18, 1931.

The People of the State of Michigan enact:

554.111 Reversionary interest in lands conveyed on condition subsequent; transfer; scope of act.

Sec. 1. The reversionary interest in lands conveyed on a condition subsequent may be granted, conveyed, transferred or devised by the owner of such interest, and by the subsequent grantees or devisees thereof, either before or after the right of re-entry becomes effective: Provided, That this act shall not affect any such interest created before it takes effect.

History: 1931, Act 219, Eff. Sept. 18, 1931;—CL 1948, 554.111.

REVISED STATUTES OF 1846

CHAPTER 66

Chapter 66. Of Estates In Dower, By The Curtesy, And General Provisions Concerning Real Estate
(continued).

GENERAL PROVISIONS.

554.131 Rent; liability of person in possession of land.

Sec. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

History: R.S. 1846, Ch. 66;—CL 1857, 2804;—CL 1871, 4301;—How. 5771;—CL 1897, 9254;—CL 1915, 11809;—CL 1929, 13489;—CL 1948, 554.131.

554.132 Rent; assumpsit for recovery.

Sec. 32. Such rent may be recovered in an action of debt or assumpsit, and the deed of demise, or other instrument in writing, if there be any showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

History: R.S. 1846, Ch. 66;—CL 1857, 2805;—CL 1871, 4302;—How. 5772;—CL 1897, 9255;—CL 1915, 11810;—CL 1929, 13490;—CL 1948, 554.132.

554.133 Rent; other remedies for recovery.

Sec. 33. Nothing contained in the preceding sections shall deprive landlords of any legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

History: R.S. 1846, Ch. 66;—CL 1857, 2806;—CL 1871, 4303;—How. 5773;—CL 1897, 9256;—CL 1915, 11811;—CL 1929, 13491;—CL 1948, 554.133.

554.134 Termination of estate at will or by sufferance or tenancy from year to year.

Sec. 34. (1) 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. Notice is not void because it states a day for the termination of the tenancy that does not correspond to the conclusion or commencement of a rental period. The notice terminates the tenancy at the end of a period equal in length to the interval between times of payment.

(2) 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.

(3) A tenancy from year to year may be terminated by either party by a notice to quit, given at any time to the other party. The notice shall terminate the lease at the expiration of 1 year from the time of the service of the notice.

(4) If a tenant holds over after a lease is terminated pursuant to a clause in the lease providing for

termination because the tenant, a member of the tenant's household, or other person under the tenant's control has manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises, the landlord may terminate the tenancy by giving the tenant a written 24-hour notice to quit. This subsection applies only if a formal police report has been filed alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. For purposes of this subsection, "controlled substance" means a substance or a counterfeit substance classified in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the public health code, 1978 PA 368, MCL 333.7211 to 333.7216.

History: R.S. 1846, Ch. 66;—CL 1857, 2807;—CL 1871, 4304;—How. 5774;—Am. 1885, Act 162, Eff. Sept. 19, 1885;—CL 1897, 9257;—CL 1915, 11812;—CL 1929, 13492;—Am. 1935, Act 145, Eff. Sept. 21, 1935;—CL 1948, 554.134;—Am. 1990, Act 311, Imd. Eff. Dec. 14, 1990;—Am. 2004, Act 106, Eff. Sept. 1, 2004;—Am. 2012, Act 140, Imd. Eff. May 22, 2012.

554.135 Aliens; realty; right to acquire, hold or convey, descent.

Sec. 35. Any alien may acquire and hold lands, or any right thereto or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this state, or of the United States.

History: R.S. 1846, Ch. 66;—CL 1857, 2808;—CL 1871, 4305;—How. 5775;—CL 1897, 9258;—CL 1915, 11813;—CL 1929, 13493;—CL 1948, 554.135.

Former law: See Act of Aug. 12, 1805; Woodward Code (1805), p. 32; 1 Terr. Laws 32; Cass Code (1816), p. 32; and 1 Terr. Laws 135.

554.136 Aliens; effect of prior deals in realty on title.

Sec. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected, by reason of the alienage of any person from or through whom such title may have been derived.

History: R.S. 1846, Ch. 66;—CL 1857, 2809;—CL 1871, 4306;—How. 5776;—CL 1897, 9259;—CL 1915, 11814;—CL 1929, 13494;—CL 1948, 554.136.

554.137 Remainderman or reversioner; right to sue for injury.

Sec. 37. A person seized of an estate in remainder or reversion, may maintain an action of trespass on the case, for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

History: R.S. 1846, Ch. 66;—CL 1857, 2810;—CL 1871, 4307;—How. 5777;—CL 1897, 9260;—CL 1915, 11815;—CL 1929, 13495;—CL 1948, 554.137.

554.138 Joint tenant or tenant in common; action against cotenant.

Sec. 38. One joint tenant or tenant in common, and his executors or administrators, may maintain an action for money had and received, against his co-tenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

History: R.S. 1846, Ch. 66;—CL 1857, 2811;—CL 1871, 4308;—How. 5778;—CL 1897, 9261;—CL 1915, 11816;—CL 1929, 13496;—CL 1948, 554.138.

554.139 Lease or license of residential premises; covenants; modifications; liberal construction, inspection.

Sec. 39. (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 tenants 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.

History: Add. 1968, Act 295, Eff. Oct. 1, 1968.

UNTENANTABLE BUILDINGS
Act 42 of 1917

AN ACT to provide for the surrender by lessees or occupants of any leased property destroyed or rendered untenable or unfit for occupancy.

History: 1917, Act 42, Eff. Aug. 10, 1917.

The People of the State of Michigan enact:

554.201 Untenable building; surrender, liability of lessee for rent.

Sec. 1. When any leased or rented building is destroyed, or is so injured by the elements, or in any other way, as to be untenable or unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the building, and of the land so injured, destroyed, or rendered untenable or unfit for occupancy; and such lessee or occupant shall not be liable to pay to the lessor or owner rent for the time subsequent to the surrender.

History: 1917, Act 42, Eff. Aug. 10, 1917;—CL 1929, 13497;—CL 1948, 554.201.

RENTS AND PROFITS UNDER TRUST MORTGAGE
Act 228 of 1925

AN ACT to authorize the assignment of rents and profits of property mortgaged under a trust mortgage or deed of trust, to secure bonds or obligations issued or to be issued thereunder.

History: 1925, Act 228, Eff. Aug. 27, 1925.

The People of the State of Michigan enact:

554.211 Assignment of rents and profits under trust mortgage or deed; lawfulness.

Sec. 1. Hereafter, in or in connection with any trust mortgage or deed of trust, to secure bonds or obligations issued or to be issued thereunder, it shall be lawful to assign the rents and profits of the property mortgaged to the trustee or trustees under the trust mortgage or deed of trust for the benefit of the bondholders and holders of the obligations issued or to be issued under the trust mortgage or deed of trust.

History: 1925, Act 228, Eff. Aug. 27, 1925;—CL 1929, 13498;—CL 1948, 554.211.

554.212 Assignment; validity against mortgagor and occupiers of premises.

Sec. 2. The assignment of rents and profits, when so made, shall be a good and valid assignment of rents as against the mortgagor or mortgagors or those claiming under or through them from the date of the recording of the trust mortgage or deed of trust, and shall operate against and be binding upon the occupiers of the premises from the date of the filing by the trustee or trustees in the office of the register of deeds for the county in which the property is located of a notice of default in the terms and conditions of the trust mortgage or deed of trust, and service of a copy of such notice upon the occupiers of the mortgaged premises.

History: 1925, Act 228, Eff. Aug. 27, 1925;—CL 1929, 13499;—CL 1948, 554.212.

554.213 Trust mortgage; definition.

Sec. 3. The term "trust mortgage" as used in this act, means and includes, among other forms of trust mortgages, any mortgage given to any person or corporation engaged in the business of financing or refinancing buildings or building enterprises, securing a note, notes, bonds or obligations, and which by its terms contemplates a sale thereof in part or parts and which is actually sold in part or parts in form of certificates of participation or by assignments of undivided interests therein.

History: Add. 1933, Act 55, Imd. Eff. Apr. 14, 1933;—CL 1948, 554.213.

554.214 Emergency legislation; immediate necessity; liberal construction.

Sec. 4. That by reason of the acute financial and economic condition, which has arisen and now exists in the state of Michigan an emergency exists, which requires special legislation under the police power of the state, and that this act is enacted to meet such emergency and is hereby declared to be immediately necessary for the preservation of the public peace, health and safety and shall be liberally construed.

History: Add. 1933, Act 55, Imd. Eff. Apr. 14, 1933;—CL 1948, 554.214.

ASSIGNMENT OF RENTS TO ACCRUE AS ADDITIONAL MORTGAGE SECURITY
Act 210 of 1953

AN ACT to authorize the assignment of rents to accrue from existing leases as additional security to mortgage obligations.

History: 1953, Act 210, Eff. Oct. 2, 1953.

The People of the State of Michigan enact:

554.231 Assignment of rents to accrue from leases as additional mortgage security.

Sec. 1. Hereafter, in or in connection with any mortgage on commercial or industrial property other than an apartment building with less than 6 apartments or any family residence to secure notes, bonds or other fixed obligations, it shall be lawful to assign the rents, or any portion thereof, under any oral or written leases upon the mortgaged property to the mortgagee, as security in addition to the property described in such mortgage. Such assignment of rents shall be binding upon such assignor only in the event of default in the terms and conditions of said mortgage, and shall operate against and be binding upon the occupiers of the premises from the date of filing by the mortgagee in the office of the register of deeds for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of such notice upon the occupiers of the mortgaged premises.

History: 1953, Act 210, Eff. Oct. 2, 1953;—Am. 1966, Act 151, Imd. Eff. June 24, 1966.

554.232 Assignment of rents; validity.

Sec. 2. The assignment of rents, when so made, shall be a good and valid assignment of the rents to accrue under any lease or leases in existence or coming into existence during the period the mortgage is in effect, against the mortgagor or mortgagors or those claiming under or through them from the date of the recording of such mortgage, and shall be binding upon the tenant under the lease or leases upon service of a copy of the instrument under which the assignment is made, together with notice of default as required by section 1.

History: 1953, Act 210, Eff. Oct. 2, 1953;—Am. 1966, Act 151, Imd. Eff. June 24, 1966.

554.233 Modification of mortgage.

Sec. 3. While the mortgage remains in force no modification of the rental covenants in such lease shall be binding upon the holder of such mortgage without his written consent thereto.

History: 1953, Act 210, Eff. Oct. 2, 1953.

LATERAL AND SUBJACENT SUPPORT TO ADJOINING LAND
Act 314 of 1921

AN ACT to prescribe the duties of an owner or occupant of lands, upon which excavations are made, in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon; and to fix remedies for the violation thereof.

History: 1921, Act 314, Eff. Aug. 18, 1921.

The People of the State of Michigan enact:

554.251 Owner or occupant of excavated land; duty to support adjacent land and structures.

Sec. 1. It shall be the duty of every person, partnership or corporation who excavate upon land owned or occupied by them to a depth exceeding 12 feet below the established grade of a street or highway upon which such land abuts or, if there be no such established grade, below the surface of the adjoining land, to furnish sufficient lateral and subjacent support to the adjoining land to protect said land and all structures thereon from injury due to the removed material in its natural state, or due to the disturbance of other existing conditions caused by such excavation.

History: 1921, Act 314, Eff. Aug. 18, 1921;—CL 1929, 13500;—CL 1948, 554.251.

554.252 Failure to support adjacent land; liability.

Sec. 2. Such owner or occupant shall be liable to the proper person entitled to sue therefor, for the actual damage to land and structures and any other resulting damages, arising from failure to fulfill the duty created by this act. They shall also be liable to occupants or tenants of such land or structures for damage to their property or business proximately resulting from injury to such land or structures caused by their failure to fulfill said duty.

History: 1921, Act 314, Eff. Aug. 18, 1921;—CL 1929, 13501;—CL 1948, 554.252.

554.253 Failure to support adjacent land; equitable relief.

Sec. 3. The owners or occupants of adjoining lands or structures shall also be entitled to relief in a court of equity by way of injunction or other appropriate equitable relief, to restrain the prosecution of such excavating operations without the taking of such precautions to provide such lateral and subjacent support as are reasonable under the circumstances, and it shall not be necessary in such proceedings to allege or show that there is no adequate remedy at law. Such court of equity shall have jurisdiction in such proceedings to adjudicate all disputes arising in connection with the subject matter thereof.

History: 1921, Act 314, Eff. Aug. 18, 1921;—CL 1929, 13502;—CL 1948, 554.253.

554.254 Common law duties and remedies.

Sec. 4. The remedies herein provided and the duty herein created are in addition to the duty and remedies existing at common law.

History: 1921, Act 314, Eff. Aug. 18, 1921;—CL 1929, 13503;—CL 1948, 554.254.

OIL, GAS, OR MINERAL LEASES
Act 81 of 1929

AN ACT relating to the record, forfeiture and surrender of oil, gas and other mineral leases, providing a procedure therefor, and providing a penalty.

History: 1929, Act 81, Eff. Aug. 28, 1929.

The People of the State of Michigan enact:

554.281 Oil, gas or mineral lease; forfeiture; procedure for surrender, effect on record.

Sec. 1. When any oil, gas or other mineral lease heretofore or hereafter given on land situated in any county of Michigan and recorded therein shall become forfeited, it shall be the duty of the lessee, his successors or assigns, within 60 days from the date of the taking effect of this act, if the forfeiture occurred prior thereto, and within 30 days after the date of the forfeiture of any other lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, his successors or assigns, witnessed and acknowledged and placed on record in the county where the leased land is situated, without cost to the owner thereof: Provided, That if the said lessee, his successors or assigns shall fail or neglect to execute and record such surrender within the time provided for, then the owner of said land may at any time after forfeiture serve upon said lessee, his successors or assigns, in person, or by registered letter, at his last known address, or by publication for 3 consecutive weeks in a newspaper of general circulation in the county where the land is situated, a notice in writing in substantially the following form:

“To: I, the undersigned, owner of the following described land situated in county, Michigan, to-wit: (description of land) upon which a lease dated the day of, 19...., was given to, lessee, do hereby notify you that the terms of said lease have been broken by the owner thereof, that I hereby elect to declare and do declare the said lease forfeited and void, and that unless you do within 30 days from this date notify the register of deeds of said county as provided by law, that said lease has been forfeited, I will file with the said register of deeds an affidavit of forfeiture as provided by law; and I hereby demand that you execute or have executed a proper surrender of said lease and that you put the same on record in the office of the register of deeds in said county within 30 days from this date.

Dated this day of, 19....

.....”

And the owner of said land may after 30 days from the date of service, registration or first publication of said notice, file with the register of deeds of the county where said land is situated, an affidavit setting forth that the affiant is the owner of said land; that the lessee, or his successors or assigns, has failed and neglected to comply with the terms of said lease, reciting the facts constituting such failure; that the same has been forfeited and is void; and setting out in said affidavit a copy of the notice served as above provided and the manner and time of the service thereof.

If the lessee, his successors or assigns, shall within 30 days after the filing of such affidavit, give notice in writing to the register of deeds of the county where said lands are located that said lease has not been forfeited and that said lessee, his successors or assigns, still claim that said lease is still in full force and effect, then the said affidavit shall not be recorded, but the register of deeds shall notify the owner of the lands of the action of the lessee, his successors or assigns, and the owner of the land shall be entitled to the remedies now provided by law, for the cancellation of such disputed lease. If the lessee, his successors or assigns, shall not notify the register of deeds as above provided, then the register of deeds shall record said affidavit and thereupon the said lease shall be null and void and of no legal effect, and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns against the lessor, his successors or assigns.

History: 1929, Act 81, Eff. Aug. 28, 1929;—CL 1929, 13506;—CL 1948, 554.281.

554.282 Oil, gas or mineral lease; suit for release; damages.

Sec. 2. Should the owner of such lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may after giving notice as provided in section 1 of this act, in lieu of the method prescribed in the preceding section, sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successors or assigns, the sum of \$100.00 as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant.

History: 1929, Act 81, Eff. Aug. 28, 1929;—CL 1929, 13507;—Am. 1945, Act 214, Eff. Sept. 6, 1945;—CL 1948, 554.282.

Rendered Friday, April 19, 2019

Page 20

Michigan Compiled Laws Complete Through PA 2 of 2019

TERMINATION OF OIL OR GAS INTERESTS IN LAND
Act 42 of 1963

AN ACT to provide for the termination of dormant oil and gas interests in land owned by persons other than the owners of the surface and for the vesting of title to same in the surface owners in the absence of the filing of a notice of claim of interest within a specified period of time.

History: 1963, Act 42, Eff. Sept. 6, 1963.

The People of the State of Michigan enact:

554.291 Oil or gas interest in land; abandonment; claim of interest; vesting in surface owner; preservation from disclosure.

Sec. 1. (1) Any interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged, or transferred by instrument recorded in the register of deeds office for the county where that interest in oil or gas is located for a period of 20 years shall, in the absence of the issuance of a permit to drill an oil or gas well issued by the department of environmental quality, or its predecessor or successor, as to that interest in oil or gas or the actual production or withdrawal of oil or gas from said lands, or from lands covered by a lease to which that interest in oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in underground gas storage operations, during such period of 20 years, be deemed abandoned, unless the owner thereof shall, within 3 years after September 6, 1963 or within 20 years after the last sale, lease, mortgage, or transfer of record of that interest in oil or gas or within 20 years after the last issuance of a drilling permit as to that interest in oil or gas or actual production or withdrawal of oil or gas, from said lands, or from lands covered by a lease to which that interest in oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in oil or gas in underground gas storage operations, whichever is later, record a claim of interest as provided in section 2.

(2) Any interest in oil or gas deemed abandoned as provided in subsection (1) shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership.

(3) Notwithstanding any other provision of this act to the contrary, if a judgment of foreclosure is entered under section 78k of the general property tax act, 1893 PA 206, MCL 211.78k, for the nonpayment of delinquent taxes levied on property, an oil or gas interest in the property owned by a person other than the owner of the surface shall not be preserved from foreclosure under section 78k of the general property tax act, 1893 PA 206, MCL 211.78k, unless that interest is sold, leased, mortgaged, transferred, reserved, or subject to a claim of interest under section 2 and an instrument evidencing the sale, lease, mortgage, transfer, reservation, or claim of interest is recorded in the office of the register of deeds in the county in which the property is located during the 20-year period immediately preceding the date of filing a petition for foreclosure under section 78h of the general property tax act, 1893 PA 206, MCL 211.78h.

History: 1963, Act 42, Eff. Sept. 6, 1963;—Am. 2006, Act 519, Imd. Eff. Dec. 29, 2006.

Constitutionality: This act is not unconstitutional as applied in these cases. Van Slooten v Larsen, 410 Mich 21; 299 NW2d 704 (1980).

554.292 Preservation of oil or gas interest; recording of interest notice claimed; applicability of act.

Sec. 2. (1) Any interest in oil or gas referred to in this act may be preserved by recording within the period specified in this act a written notice in the register of deeds office for the county in which the land is located. The notice shall be verified by oath and shall describe the land and the nature of the interest claimed, give the name and address of the person or persons claiming the interest, and state that the person or persons desire to preserve the interest and do not intend to abandon the interest.

(2) A person other than the owner of the surface holding interests in oil or gas in any land for use in underground gas storage operations may preserve the oil or gas interests, and the rights of any lessor of the oil or gas interests, by recording a single written notice defining the boundaries of and the formations included in the underground gas storage field or pool within which the oil or gas interests are located, without the necessity of describing each separate oil or gas interest claimed in that underground gas storage field or pool by that person.

(3) Recording a written notice under this section shall operate to preserve the oil or gas interest included in the written notice from abandonment under this act for a period of 20 years after recording. At the conclusion of that 20-year period, that interest in oil or gas shall be deemed abandoned if, during that 20-year period, the

nondormant character of the oil or gas interest has not been evidenced by sale, lease, mortgage, or transfer by instrument recorded in the register of deeds office for the county in which that oil or gas interest is located, a drilling permit issued, oil or gas actually produced or withdrawn from said lands, or from lands covered by a lease to which that interest in oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in oil or gas in underground gas storage operations, or a like notice filed.

(4) In the absence of prior abandonment, an interest in oil or gas in any land owned by any person other than the owner of the surface may be preserved indefinitely from abandonment under this act by filing written notices as provided in this act or the performance of any of the acts specified in this act evidencing nondormancy of the interest in oil or gas within each succeeding 20-year period.

(5) This act shall not apply to any interest in oil or gas owned by any governmental body or agency.

History: 1963, Act 42, Eff. Sept. 6, 1963;—Am. 2006, Act 519, Imd. Eff. Dec. 29, 2006.

554.293 Underground gas storage operation; good faith affidavit, filing.

Sec. 3. For the purposes of this act, any person using such interests in underground gas storage operations may file a good faith affidavit in the register of deeds office for the county or counties where such interests are located, defining the boundaries of the underground gas storage field, or pool, and the formations included therein. Such affidavit shall be prima facie evidence of the use of such interests in underground gas storage operations.

History: 1963, Act 42, Eff. Sept. 6, 1963.

554.294 "Person" defined.

Sec. 4. As used in this act, "person" means an individual, partnership, corporation, association, or other legal entity.

History: 1963, Act 42, Eff. Sept. 6, 1963;—Am. 2006, Act 519, Imd. Eff. Dec. 29, 2006.

NOTICE OF FORFEITURE OF LAND CONTRACT
Act 235 of 1929

AN ACT to provide for serving notice of forfeiture of land contracts upon vendees or others entitled to such notice when such persons are absent from the state or concealed therein, or when their whereabouts is unknown.

History: 1929, Act 235, Imd. Eff. May 21, 1929.

The People of the State of Michigan enact:

554.301 Notice of land contract forfeiture; publication.

Sec. 1. Whenever the vendee in a land contract, or other persons entitled by law to receive notice of the forfeiture of the same, shall be absent from the state of Michigan, or concealed therein, or when the whereabouts of such person cannot be determined after diligent search and inquiry, it shall be lawful for the person giving such notice of forfeiture, to publish the same 3 successive times at weekly intervals in some newspaper printed and circulating in the county where such property is situated, if there be one printed and circulating in said county; and in case there be no newspaper printed and circulating in said county, then in some newspaper published in an adjoining county and circulating in the county where such property is situated.

History: 1929, Act 235, Imd. Eff. May 21, 1929;—CL 1929, 13508;—CL 1948, 554.301.

554.302 Notice of land contract forfeiture; proof.

Sec. 2. Upon a trial before a circuit court commissioner, or before any other court in this state, when it may become necessary to prove the giving of such notice of forfeiture, the same may be shown by the introduction of due proof of such publication and further proof to the satisfaction of said court, that the circumstances justifying such publication existed at the time thereof.

History: 1929, Act 235, Imd. Eff. May 21, 1929;—CL 1929, 13509;—CL 1948, 554.302.

EFFECT OF BIGAMOUS RELATIONS ON RIGHT TO INHERIT
Act 327 of 1905

554.321, 554.322 Repealed. 1978, Act 642, Eff. July 1, 1979;—1979, Act 51, Imd. Eff. July 7, 1979.

GIFTS, GRANTS, BEQUESTS, AND DEVISES
Act 280 of 1915

AN ACT to establish the validity and to provide for the administration and control of gifts, grants, bequests and devises to religious, educational, charitable or benevolent uses, or for cemeteries, whether in trust or otherwise, which would be otherwise invalid by reason of indefiniteness or uncertainty of the object of such trust or of the persons designated as the beneficiaries thereunder in the instrument creating the same or by reason of contravening any statute or rule against perpetuities; and regulating the same; to establish the validity of all gifts, grants, devises or bequests made in pursuance of Act 122 of the Public Acts of 1907 and of the acts amendatory thereof, and all proceedings and acts performed in accordance therewith; and repealing Act 122 of the Public Acts of 1907, and all amendments thereto.

History: 1915, Act 280, Eff. Aug. 24, 1915.

The People of the State of Michigan enact:

554.351 Gift or grant for certain purposes; effect of indefiniteness, vesting of title, trustee appointment.

Sec. 1. No gift, grant, bequest or devise, whether in trust or otherwise to religious, educational, charitable or benevolent uses, or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, or anything therein contained which shall in other respects be valid under the laws of this state, shall be invalid by reason of the indefiniteness or uncertainty of the object of such trust or of the persons designated as the beneficiaries thereunder in the instrument creating the same, nor by reason of the same contravening any statute or rule against perpetuities. If in the instrument creating such a gift, grant, bequest or devise, there is a trustee named to execute the same, the legal title to the lands or property given, granted, devised or bequeathed for such purposes, shall vest in such trustee. If no such trustee shall be named in said instrument or if a vacancy occurs in the trusteeship, then the trust shall vest in the court of chancery for the proper county, and shall be executed by some trustee appointed for that purpose by or under the direction of the court; and said court may make such orders or decrees as may be necessary to vest the title to said lands or property in the trustee so appointed.

History: 1915, Act 280, Eff. Aug. 24, 1915;—CL 1915, 11099;—CL 1929, 13512;—CL 1948, 554.351.

Former law: See Act 122 of 1907.

554.352 Gift or grant for certain purposes; jurisdiction of court; trust construction; prosecutor duties.

Sec. 2. The circuit court for the proper county shall have jurisdiction and control over the gifts, grants, bequests and devises in all cases provided for by section 1. Every such trust shall be liberally construed by the court so that the intentions of the creator thereof shall be carried out whenever possible. The attorney general shall represent the people of the state and the beneficiaries in all cases where they are uncertain or indefinite, and shall enforce such trusts by proper proceedings in the court, but the attorney general shall not be required to perform any duties in connection with such trusts in any court outside of this state.

History: 1915, Act 280, Eff. Aug. 24, 1915;—CL 1915, 11100;—CL 1929, 13513;—CL 1948, 554.352;—Am. 1965, Act 12, Imd. Eff. Apr. 13, 1965.

554.353 Validation clause.

Sec. 3. All gifts, grants, devises or bequests made in pursuance to the provisions of Act No. 122 of the Public Acts of 1907 and of the acts amendatory thereof, and all proceedings and acts performed in accordance therewith are hereby validated.

History: 1915, Act 280, Eff. Aug. 24, 1915;—CL 1915, 11101;—CL 1929, 13514;—CL 1948, 554.353.

Compiler's note: Act 122 of 1907, referred to in this section, was repealed by Act 280 of 1915.

GIFTS, GRANTS, BEQUESTS, AND DEVISES
Act 373 of 1925

AN ACT to relieve gifts, grants, devises and bequests, in trust or otherwise, for public welfare purposes, from the operation of all statutory and all common law rules of this state against perpetuities and restraint of alienation, to define said purposes, and to provide a rule of construction.

History: 1925, Act 373, Eff. Aug. 27, 1925.

The People of the State of Michigan enact:

554.381 Public welfare purposes; validity of gifts and bequests.

Sec. 1. No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes.

History: 1925, Act 373, Eff. Aug. 27, 1925;—CL 1929, 13516;—CL 1948, 554.381.

554.382 Public welfare purposes; definition.

Sec. 2. Public welfare purposes are defined to be all lawful purposes beneficial to the public as a whole.

History: 1925, Act 373, Eff. Aug. 27, 1925;—CL 1929, 13517;—CL 1948, 554.382.

SALE OF CERTAIN LANDS
Act 258 of 1925

AN ACT to provide for the sale of any lands heretofore or hereafter conveyed for any religious, educational, charitable, benevolent or public use or purpose, and the reinvestment of the proceeds of such sale in other lands subject to the same conditions as to the use or purpose set forth in the original conveyance, whenever, because of changed conditions or circumstances, it is impossible or impractical to hold or use said lands for the use or purpose set forth in such conveyance.

History: 1925, Act 258, Eff. Aug. 27, 1925.

The People of the State of Michigan enact:

554.401 Lands sale held for public purposes and new lands purchase; bill of complaint.

Sec. 1. Whenever any lands shall heretofore or hereafter be conveyed by any grant or devise to be held or used for any religious, educational, charitable, benevolent or public purpose, with a condition annexed in the instrument of conveyance that in event said lands shall at any time cease to be held or used for the purpose set forth in such conveyance, title thereto shall revert to the grantor or devisor and his heirs, and it shall appear in the judgment of the officers, trustees or governing body of the grantee named in such conveyance that because of changed conditions or circumstances since the execution of such conveyance it is impossible or impractical to longer hold or use said lands for the purpose mentioned in such conveyance and that the religious, educational, charitable, benevolent or public object of the grantor or devisor, as set forth in such conveyance, may be prevented or defeated thereby, the said grantee may file a bill of complaint in the circuit court in chancery of the county in which said lands are situated, setting forth a correct description of such lands and the terms and conditions under which the same shall be held or used, together with a comprehensive statement of the changed conditions and circumstances which render it impossible or impractical to longer hold or use the same for the purpose mentioned in such conveyance.

History: 1925, Act 258, Eff. Aug. 27, 1925;—CL 1929, 13518;—CL 1948, 554.401.

554.402 Lands sale held for public purposes and new lands purchase; parties defendant, time.

Sec. 2. In any proceeding mentioned in section 1 the heirs of the grantor or devisor if known shall be named as defendants and the same proceedings had thereon as is provided by existing law in actions against known defendants. If the names or addresses of the heirs of any such grantor or devisor are unknown, then proceedings shall be had in such action as may be provided by existing law in proceedings against unknown defendants: Provided, however, That no such action shall be brought within a period of 10 years from the execution of any such conveyance nor within the lifetime of the grantor or devisor thereof.

History: 1925, Act 258, Eff. Aug. 27, 1925;—CL 1929, 13519;—CL 1948, 554.402.

554.403 Lands sale held for public purposes and purchase of new lands; decree.

Sec. 3. If upon the hearing it shall appear to the satisfaction of the court that the allegations in the bill of complaint are true and that because of changed conditions or circumstances since the execution of such conveyance it is impossible or impractical to longer hold or use said lands for the purposes limited in such conveyance and that the religious, educational, charitable, benevolent or public object of the grantor, as set forth in such conveyance, may be defeated thereby, a decree may be entered authorizing the grantor to sell such lands for the highest price obtainable therefor, in the same manner as may be provided by law for the sale of lands of infants and incompetent persons, and directing that the proceeds of the sale of such lands shall be reinvested in other lands suitable for the use or purpose set forth in the original conveyance, which lands shall thereupon be held by the grantee named in the original conveyance subject to the same limitations as set forth therein.

History: 1925, Act 258, Eff. Aug. 27, 1925;—CL 1929, 13520;—CL 1948, 554.403.

554.404 Lands sale held for public purposes and purchase of new lands; effect of sale on title.

Sec. 4. No sale of lands under the decree of the court as herein provided shall defeat the estate of the grantee named in the original conveyance because of the failure to longer hold or use the same for the purpose named in such conveyance and shall be sufficient to convey to the purchaser of such lands a good and sufficient title in fee simple, free from all conditions or limitations whatsoever, under which the same shall theretofore have been held or used.

History: 1925, Act 258, Eff. Aug. 27, 1925;—CL 1929, 13521;—CL 1948, 554.404.

**IRREVOCABLE GIFTS OF SECURITIES TO MINORS
Act 43 of 1956**

554.431-554.443 Repealed. 1959, Act 172, Eff. Mar. 19, 1960.

**MICHIGAN UNIFORM GIFTS TO MINORS ACT
Act 172 of 1959**

554.451-554.461 Repealed. 1998, Act 433, Imd. Eff. Dec. 30, 1998.

**DISCLAIMER OF SUCCESSION TO PROPERTY
Act 9 of 1971**

554.501-554.520 Repealed. 1996, Act 131, Eff. June 1, 1996.

MICHIGAN UNIFORM TRANSFERS TO MINORS ACT
Act 433 of 1998

AN ACT to regulate certain transfers of property to minors; to make uniform the law regulating certain transfers to property to minors; and to repeal acts and parts of acts.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

The People of the State of Michigan enact:

554.521 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan uniform transfers to minors act”.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.522 Meanings of words and phrases.

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 to 5 have the meanings ascribed to them in those sections.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.523 Definitions; A to C.

Sec. 3. (1) “Adult” means an individual who is 18 years of age or older.

(2) “Benefit plan” means an employer's plan for the benefit of an employee or partner.

(3) “Broker” means a person lawfully engaged in the business of effecting transactions in securities or commodity contracts for the person's own account or for the account of others.

(4) “Conservator” means a person appointed or qualified by a court to act as a conservator, special conservator, guardian, limited guardian, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) “Court” means the probate court for the county in which a minor resides.

(6) “Custodial property” means an interest in property transferred to a custodian under this act and the income from, and proceeds of, that interest in property.

(7) “Custodian” means a person so designated pursuant to section 13 or a successor or substitute custodian designated under section 7, 23, or 24.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.524 Definitions; F to P.

Sec. 4. (1) “Financial institution” means a bank, trust company, savings and loan association, or credit union chartered and supervised under state or federal law.

(2) “Legal representative” means an individual's personal representative or conservator.

(3) “Member of the minor's family” means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(4) “Minor” means an individual who is less than 18 years of age.

(5) “Person” means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(6) “Personal representative” means a personal representative, independent personal representative, or special fiduciary of a decedent's estate or a person legally authorized to perform substantially the same functions.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.525 Definitions; S to T.

Sec. 5. (1) “State” includes a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(2) “Transfer” means a transaction that creates custodial property under section 13.

(3) “Transferor” means a person who makes a transfer under this act.

(4) “Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.526 Change in residence of transferor, minor, or custodian, or removal of custodial property from state; jurisdiction; governing laws.

Sec. 6. (1) This act applies to a transfer that refers to this act in the designation by which the transfer is

made as provided in section 13 if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this act despite a subsequent change in residence of the transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this act is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and that is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.527 Custodian to receive property upon occurrence of future event; nomination; creation of custodial property.

Sec. 7. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the future event by naming the custodian followed in substance by the words: “as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act”. The nomination may name 1 or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, trust, deed, instrument exercising a power of appointment, or writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under section 13.

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 13. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 13.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.528 Transfer by irrevocable gift or power of appointment in custodian.

Sec. 8. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 13.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.529 Irrevocable transfer by personal representative or trustee; designation of custodian.

Sec. 9. (1) A personal representative or trustee may make an irrevocable transfer pursuant to section 13 to a custodian for the benefit of a minor as authorized in the governing will or trust. If the testator or grantor has nominated a custodian under section 7 to receive the custodial property, the transfer shall be made to the custodian.

(2) If the testator or grantor has not nominated a custodian under section 7, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 13.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.530 Absence of will or authorization to make irrevocable transfer; transfer by personal representative, trustee, or conservator; conditions.

Sec. 10. (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 13 in the absence of a will or under a will or trust that does not contain an authorization to make the irrevocable transfer.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 13.

(3) A transfer under subsection (1) or (2) may be made only if the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor; the transfer is not prohibited by or

inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and, if the transfer exceeds \$10,000.00 in value, the transfer is authorized by the court.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.531 Minor not having conservator; transfer by person holding property or owing liquidated debt.

Sec. 11. (1) Subject to subsections (2) and (3), a person not subject to section 9 or 10 who holds property of, or owes a liquidated debt to, a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 13.

(2) If a person having the right to do so under section 7 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under section 7, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company. If the value of the property exceeds \$10,000.00, a transfer under this subsection shall only be made if authorized by the court.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.532 Custodial property; receipt and discharge.

Sec. 12. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this act.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.533 Creation and transfer of custodial property; actions.

Sec. 13. (1) Custodial property is created and a transfer is made whenever an action described in subsections (2) to (8) is taken.

(2) A certificated or uncertificated security in registered form is either of the following:

(a) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(b) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in section 14.

(3) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(4) The ownership of a life or endowment insurance policy or annuity contract is either of the following:

(a) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(b) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(5) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(6) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(7) A certificate of title issued by a department or agency of a state or of the United States that evidences title to tangible personal property is either of the following:

(a) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(b) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(8) An interest in any property not described in subsections (2) to (7) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in section 14.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.534 Instrument; form.

Sec. 14. An instrument in substantially the following form satisfies the requirements of section 13(2)(b) and 13(8):

“TRANSFER UNDER THE MICHIGAN UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity, if a fiduciary) transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act, the following:

(insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Michigan uniform transfers to minors act.

Dated: _____

(Signature of Custodian)

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.535 Time of control; holding constituting single custodianship.

Sec. 15. (1) A transferor shall place the custodian in control of the custodial property as soon as practicable.

(2) A transfer shall be made only for 1 minor, and only 1 person shall be the custodian. Custodial property held under this act by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.536 Conditions not affecting validity of transfer; transfer as irrevocable; property indefeasibly vested in minor; powers, rights, and immunities.

Sec. 16. (1) The validity of a transfer made in a manner prescribed in this act is not affected by any of the following:

- (a) Failure of the transferor to comply with section 15 concerning control.
- (b) Designation of an ineligible custodian, except the transfer is invalidated by designation of a transferor for property for which the transferor is ineligible to serve as custodian under section 13.
- (c) Death or incapacity of a person nominated under section 7 or designated under section 13 as custodian or the declination of the office by that person.

(2) A transfer made pursuant to section 13 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has the rights, powers, duties, and authority provided in this act, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this act.

(3) By making a transfer, the transferor incorporates in the disposition the provisions of this act and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this act.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.537 Duties of custodian.

Sec. 17. (1) A custodian shall do all of the following:

- (a) Take control of custodial property.
- (b) Register or record title to custodial property if appropriate.
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, in the custodian's discretion and without liability to the minor or the minor's estate, a custodian may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on the life of the

minor only if the minor or the minor's estate is the sole beneficiary, or the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded. Custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as custodian for _____ (name of minor) under the Michigan uniform transfers to minors act".

(5) A custodian shall keep a record of each transaction with respect to custodial property, including information necessary for the preparation of the minor's tax return, and shall make the records available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least 14 years of age.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.538 Rights, powers, and authority over custodial property; limitation.

Sec. 18. A custodian, acting in a custodial capacity, has the rights, powers, and authority over custodial property that an unmarried adult owner has over his or her own property, but a custodian may exercise those rights, powers, and authority in that capacity only. This section does not relieve a custodian from liability for breach of section 17.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.539 Delivery, payment, or expenditure by custodian.

Sec. 19. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor without court order, without regard to the duty or ability of the custodian personally or of any other person to support the minor, and without regard to other income or property of the minor that may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor is at least 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, is not in substitution for, and does not affect an obligation of a person to support the minor.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.540 Custodian; expenses; compensation; bond.

Sec. 20. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties. Except for a person who is a transferor under section 8, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(2) Except as provided in section 24, a custodian need not give a bond.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.541 Responsibility of third person.

Sec. 21. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining any of the following:

(a) The validity of the purported custodian's designation.

(b) The propriety of, or the authority under this act for, an act of the purported custodian.

(c) The validity or propriety under this act of an instrument executed or given either by the person purporting to make a transfer or by the purported custodian.

(d) The propriety of the application of property of the minor delivered to the purported custodian.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.542 Liability of custodian or minor.

Sec. 22. (1) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property, or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the

custodial capacity, whether or not the custodian or the minor is personally liable for the contract, obligation, or tort.

(2) A custodian is not personally liable in any of the following situations:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and fails to identify the custodianship in the contract.

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.543 Service as custodian; declination; substitute; successor.

Sec. 23. (1) A person nominated under section 7 or designated pursuant to section 13 as custodian may decline to serve by delivering a written declination to the person who made the nomination or to the transferor or the transferor's legal representative. The declination shall describe the custodianship being declined and shall be signed by the person declining.

(2) If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 7, the person who made the nomination may nominate a substitute custodian under section 7. If a substitute custodian is not nominated, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer. A substitute custodian shall be nominated or designated from among the persons eligible to serve as custodian for that kind of property under section 13. The custodian so designated has the rights of a successor custodian.

(3) A custodian at any time may designate a trust company or an adult other than a transferor under section 8 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain, or is not accompanied by, the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.544 Resignation, ineligibility, death, or incapacitation of custodian; possession and control of property and records; petition for removal of custodian.

Sec. 24. (1) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(2) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is not less than 14 years of age, the minor may designate as successor custodian, in the manner prescribed in section 23(3), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor is less than 14 years of age or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or another interested person may petition the court to designate a successor custodian.

(3) A custodian who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian may bring an action to enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(4) A transferor, the legal representative of a transferor, an adult member of the minor's family, the conservator of the minor, or the minor if the minor is not less than 14 years of age may petition the court to remove the custodian for cause and designate a successor custodian other than a transferor under section 8, or to require the custodian to give appropriate bond.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.545 Accounting.

Sec. 25. (1) A minor who is not less than 14 years of age, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for either of the following:

(a) An accounting by the custodian or the custodian's legal representative.

(b) A determination of responsibility, as between the custodial property and the custodian personally, for

claims against the custodial property, unless the responsibility has been adjudicated in an action under section 22 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) In a proceeding under this act or in any other proceeding, the court may require or permit a custodian or the custodian's legal representative to account.

(4) If a custodian is removed under section 24, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.546 Transfer of property to minor; time.

Sec. 26. Except as provided in section 27, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor becoming 18 years of age with respect to custodial property transferred under section 8, 9, 10, or 11.

(b) The minor's death.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.547 Transfer of property to minor; delay.

Sec. 27. (1) Transfer of custodial property to the minor that is transferred to the custodian under section 8 or 9 may be delayed as provided in this section until a specified time after the minor is 18 years of age. The time of transfer to the minor shall be specified in the transfer executed under section 13 by using the words "as custodian for (name of minor) until age _____ under the Michigan uniform transfers to minors act".

(2) Transfer to the minor of custodial property transferred to the custodian under section 8 shall not be delayed later than the minor's twenty-first birthday. Transfer to the minor of custodial property transferred to the custodian under section 9 shall not be delayed unless the governing will or trust provides in substance that the custodianship continues until the minor is a specified age, not later than the minor's twenty-first birthday and that the will or trust determines the time to be specified in the transfer.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.548 Applicability of act to transfer described in MCL 554.526.

Sec. 28. This act applies to a transfer described in section 6 made after the effective date of this act if either of the following is true:

(a) The transfer purports to have been made under former 1959 PA 172.

(b) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this act is necessary to validate the transfer.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.549 Applicability of act to transfer made before effective date.

Sec. 29. (1) Transfer of custodial property made before the effective date of this act is validated notwithstanding that there was no specific authority in former 1959 PA 172 for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This act applies to a transfer made before the effective date of this act in a manner and form prescribed in former 1959 PA 172, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this act.

(3) With respect to the age of a minor for whom custodial property is held under this act, sections 3, 4, and 26 do not apply to custodial property held in a custodianship that terminated because the minor becomes 18 years of age after December 31, 1971, and before the effective date of this act.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.550 Construction of act.

Sec. 30. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.551 Repeal of former 1959 PA 172; effect.

Sec. 31. To the extent that this act by virtue of section 29(2) does not apply to a transfer made in a manner prescribed in former 1959 PA 172, or to the powers, duties, and immunities conferred by a transfer in that

manner upon a custodian or a person dealing with a custodian, the repeal of former 1959 PA 172 does not affect that transfer or those powers, duties, and immunities.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

554.552 Repeal of MCL 554.451 to 554.461.

Sec. 32. The Michigan uniform gifts to minors act, 1959 PA 172, MCL 554.451 to 554.461, is repealed.

History: 1998, Act 433, Imd. Eff. Dec. 30, 1998.

TRESPASS LIABILITY ACT
Act 226 of 2014

AN ACT to codify the liability of possessors of land for injuries to trespassers.

History: 2014, Act 226, Imd. Eff. June 26, 2014.

The People of the State of Michigan enact:

554.581 Short title.

Sec. 1. This act shall be known and may be cited as the "trespass liability act".

History: 2014, Act 226, Imd. Eff. June 26, 2014.

554.583 Duty of care to trespasser; liability.

Sec. 3. (1) 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.

(2) Notwithstanding subsection (1), a possessor of land may be subject to liability for physical injury or death to a trespasser 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.

(3) This section 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.

History: 2014, Act 226, Imd. Eff. June 26, 2014.

LANDLORD AND TENANT RELATIONSHIPS
Act 348 of 1972

AN ACT to regulate relationships between landlords and tenants relative to rental agreements for rental units; to regulate the payment, repayment, use and investment of security deposits; to provide for commencement and termination inventories of rental units; to provide for termination arrangements relative to rental units; to provide for legal remedies; and to provide penalties.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

The People of the State of Michigan enact:

554.601 Definitions.

Sec. 1. As used in this act:

(a) "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 and includes, but without limitation, apartment units, boarding houses, rooming houses, mobile home spaces, and single and 2-family dwellings.

(b) "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.

(c) "Landlord" means the owner, lessor, or sublessor of the rental unit or the property of which it is a part and, in addition, means a person authorized to exercise any aspect of the management of the premises, including a person who, directly or indirectly, acts as a rental agent, receives rent, other than as a bona fide purchaser, and who has no obligation to deliver the receipts to another person.

(d) "Tenant" means a person who occupies a rental unit for residential purposes with the landlord's consent for an agreed upon consideration.

(e) "Security deposit" means a deposit, in any amount, paid by the tenant to the landlord or his or her 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. Security deposit does not include either of the following:

(i) An amount paid for an option to purchase, pursuant to a lease with option to purchase, unless it is shown the intent was to evade this act.

(ii) An amount paid as a subscription for or purchase of a membership in a cooperative housing association incorporated under the laws of this state. As used in this subparagraph, "cooperative housing association" means a consumer cooperative that provides dwelling units to its members.

(f) "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.

History: 1972, Act 348, Eff. Apr. 1, 1973;—Am. 1984, Act 297, Imd. Eff. Dec. 21, 1984;—Am. 1995, Act 79, Imd. Eff. June 15, 1995.

Popular name: Landlord-Tenant Act

554.601a Termination of lease; conditions; applicability of section to leases entered into, renewed, or renegotiated after effective date.

Sec. 1a. (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.

(2) This section applies only to leases entered into, renewed, or renegotiated after the effective date of this section, in accordance with the constitutional prohibition against impairment of contracts provided by section 10 of article I of the state constitution of 1963.

History: Add. 1995, Act 79, Imd. Eff. June 15, 1995.

Popular name: Landlord-Tenant Act

554.601b Tenant under apprehension of danger from domestic violence, sexual assault, or

stalking; release from rental payment obligation; written notice; content; documentation; forwarding information; liability of multiple tenants; applicability; remedies against other parties; definitions.

Sec. 1b. (1) 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. Submittal of written notice shall be made by certified mail. A rental agreement may contain a provision stating "A tenant who has a reasonable apprehension of present danger to him or her or his or her child from domestic violence, sexual assault, or stalking may have special statutory rights to seek a release of rental obligation under MCL 554.601b.". If the rental agreement does not contain such a provision, the landlord shall post written notice visible to a reasonable person in the landlord's property management office or deliver written notice to the tenant when the lease agreement is signed. The content of the written notice shall be identical to the provision in this section.

(2) The tenant shall include in the submittal required under subsection (1) a written statement that the tenant or a child of the tenant has a reasonable apprehension of present danger from domestic violence, sexual assault, or stalking. For purposes of releasing a tenant from his or her obligation to pay rent, the tenant is released from an obligation to pay rent no later than the first day of the second month that rent is due after notice is given. A release of a rental obligation under this section does not apply to prepaid amounts, including, but not limited to, prepayment of first and last months' rent. A release of rental obligation under this section does not take effect before the tenant vacates the premises. Nothing in this section shall prevent a landlord from withholding security deposits pursuant to section 13(1)(d). This subsection does not affect other sums that may be withheld by the landlord under this act or other applicable law.

(3) The requirement in subsection (1) that a tenant provide 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 is satisfied by providing 1 or more of the following written documents to the landlord:

(a) A valid personal protection order or foreign protection order as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h, or an order removing an abusive person from a home under MCL 712A.13a(4), issued by a court of competent jurisdiction that remains in effect on the date of submittal.

(b) A valid probation order, conditional release order, or parole order that is still in effect on the date of submittal if the probation order, conditional release order, or parole order indicates that the individual subject to the order is subject to conditions reasonably necessary to protect the tenant or child of the tenant, including a condition that the individual is to have no contact with the tenant or child of the tenant.

(c) A written police report that has resulted in the filing of charges by the prosecuting attorney that has jurisdiction over the matter if the charges were filed not more than 14 days before submittal of the written notice required under subsection (1).

(d) A written police report that has resulted in the filing of charges by the prosecuting attorney that has jurisdiction over the matter if the charges were filed more than 14 days before submittal of the written notice required under subsection (1). A tenant who uses a police report under this subdivision shall demonstrate a verifiable threat of present danger from domestic violence, sexual assault, or stalking. Filing of the form under subdivision (e) shall be a demonstration of a verifiable threat of present danger from domestic violence, sexual assault, or stalking.

(e) Submittal to the landlord of a report that is verified by a qualified third party in substantially the following form:

.....
[Name of organization, agency, clinic, professional service provider]

I and/or my(child) have/has a reasonable apprehension of present danger from
... domestic violence as defined by MCL 400.1501.
... sexual assault as defined by MCL 750.520a to 750.5201.
... stalking as defined by MCL 750.411h or 750.411i.

Briefly describe the incident giving rise to the reasonable apprehension of domestic violence, sexual assault, or stalking:

.....
The incident(s) that I rely on in support of this
declaration occurred on the following date(s) and
time(s): and at the following location(s):

.....
The incident(s) that I rely on in support of this
declaration was/were committed by the following person(s), if
known:

.....
I state under penalty of perjury under the laws of the
state of Michigan that the foregoing is true and correct.
By submitting this statement I do not waive any legally
recognized privilege protecting any communications that I
may have with the agency or representative whose name
appears below or with any other person or entity. I understand
that my obligation to pay rent will end no later than the first
day of the second month that rent is due after I give notice.
My obligation to pay rent does not end until I vacate the
premises. I understand that my landlord may keep prepaid
amounts, including first and last months' rent and all or part
of my security deposit or other amounts as allowed under law.
Dated at (city) ..., Michigan, this ... day of,
20...

.....
Signature of Tenant or
Household Member

I verify under penalty of perjury under the laws
of the state of Michigan that I have provided services to
the person whose signature appears above and that, based on
information communicated to me by the person whose signature
appears above, the individual has a reasonable apprehension
of present danger to the individual or his or her child
from domestic violence, sexual assault, or stalking, and
that the individual informed me of the name of the alleged
perpetrator of the actions, giving rise to the apprehension if
known. This verification does not waive any legally recognized
privilege that I, my agency, or any of its representatives
have with the person whose signature appears above.
Dated this ... day of, 20...

.....
Signature of authorized
officer/employee of
(organization, agency,
clinic, professional
service provider)

.....
License number or organizational
tax identification number

.....
Organization name

.....
Printed address

(4) The landlord shall reveal forwarding address information submitted by the tenant to other individuals only as reasonably necessary to accomplish the landlord's regular and ordinary business purpose. The landlord shall not intentionally reveal forwarding address information or documentation submitted by the tenant under this section to the person that the tenant has identified as the source of the reasonable apprehension of domestic violence, sexual assault, or stalking.

(5) If a rental agreement obligates multiple tenants to be liable for rental obligations and a tenant is released from his or her rental obligations under this section, all other tenants who are parties to the rental agreement remain subject to the rental agreement.

(6) This section applies only to leases entered into, renewed, or renegotiated after the effective date of the amendatory act that added this section.

(7) Nothing in this act shall prejudice a landlord's right to pursue available remedies against other parties under this act.

(8) As used in this section:

(a) "Child" means the minor child residing with the tenant or an adult child who is a legally incapacitated individual as that term is defined in section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105.

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Qualified third party" means 1 or more of the following:

(i) A sexual assault or domestic violence counselor.

(ii) A health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A mental health professional as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(iv) A member of the clergy, if the clergy member is affiliated with a tax-exempt religious institution under section 501(c)(3) of the internal revenue code that is listed in a telephone directory.

(d) "Sexual assault" means conduct described in sections 520a to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520l.

(e) "Sexual assault or domestic violence counselor" means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center and who, in that capacity, provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.

(f) "Stalking" means that term as defined in section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

History: Add. 2010, Act 199, Imd. Eff. Oct. 5, 2010.

554.602 Security deposit; amount.

Sec. 2. A landlord may require a security deposit for each rental unit. A security deposit shall be required and maintained in accordance with the terms of this act and shall not exceed 1 1/2 months' rent.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.603 Security deposit; notice.

Sec. 3. A landlord shall not require a security deposit 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 this act, the name and address of the financial institution or surety required by section 4 and the tenant's obligation to provide in writing a forwarding mailing address to the landlord within 4 days after termination of occupancy. The notice shall 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." Failure to provide the information relieves the tenant of his obligation relative to notification of the landlord of his forwarding mailing address.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.604 Security deposit, disposition; bond.

Sec. 4. (1) The security deposit shall be deposited in a regulated financial institution. A landlord may use the moneys so deposited for any purposes he desires if he deposits with the secretary of state a cash bond or surety bond written by a surety company licensed to do business in this state and acceptable to the attorney general to secure the entire deposits up to \$50,000.00 and 25% of any amount exceeding \$50,000.00. The attorney general may find a bond unacceptable based only upon reasonable criteria relating to the sufficiency of the bond, and shall notify the landlord in writing of his reasons for the unacceptability of the bond.

(2) The bond shall be for the benefit of persons making security deposits with the landlord. A person for whose benefit the bond is written or his legal representative may bring an action in the district, common pleas or municipal court where the landlord resides or does business for collection on the bond.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.605 Security deposit as property of tenant.

Sec. 5. For the purposes of this act 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.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.606 Waiving requirements of act.

Sec. 6. The requirements of this act may not be waived by the parties to a rental agreement except as specifically provided herein.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.607 Security deposit; permissible uses.

Sec. 7. A security deposit may be used only for the following purposes:

(a) Reimburse the landlord for actual damages to the rental unit or any ancillary facility that are the direct result of conduct not reasonably expected in the normal course of habitation of a dwelling.

(b) Pay the landlord for all rent in arrearage under the rental agreement, rent due for premature termination of the rental agreement by the tenant and for utility bills not paid by the tenant.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.608 Inventory checklists.

Sec. 8. (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.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.609 Itemized list of damages; check or money order; contents of notice of damages.

Sec. 9. 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, an itemized list of damages claimed for which the security deposit may be used as provided in section 7, including the estimated cost of repair of each property damaged item and the amounts and bases on which he intends to assess the tenant. The list shall 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 shall not include any damages that were claimed on a previous termination inventory checklist prior to the tenant's occupancy of the rental unit. The notice of damages shall include the following statement in 12 point boldface type which shall be 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 same, otherwise you will forfeit the amount claimed for damages."

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.610 Effect of noncompliance with notice of damages requirement.

Sec. 10. Failure by the landlord to comply with the notice of damages requirement within the 30 days after the termination of occupancy, constitutes agreement by the landlord that no damages are due and he shall remit to the tenant immediately the full security deposit.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.611 Notice of forwarding address; effect of noncompliance.

Sec. 11. The tenant shall notify the landlord in writing at the address given under section 4 within 4 days after termination of his occupancy of an address at which communications pursuant to this act may be received. Failure to comply with this requirement relieves the landlord of the requirement of notice of damages but does not prejudice a tenant's subsequent claim for the security deposit.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.612 Response to notice of damages.

Sec. 12. If a landlord claims damages to a rental unit and gives notice of damages as required, the tenant upon receipt of the list of damages shall respond by ordinary mail to the address provided by the landlord as required by section 3 within 7 days, indicating in detail his agreement or disagreement to the damage charges listed. For the purposes of this section the date of mailing shall be considered the date of the tenant's response.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.613 Action for damages; retention of security deposit; waiver.

Sec. 13. (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 section 11.
- (b) The tenant has failed to respond to the notice of damages as required by section 12.
- (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.

(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 chapter 57 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.5701 to 600.5759 of the Compiled Laws of 1948 or other proceedings at law. Failure of the landlord to comply fully with this section constitutes waiver of all claimed damages and makes him liable to the tenant for double the amount of the security deposit retained.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.614 Termination of landlord's interest; liability for security deposit.

Sec. 14. Upon termination of a landlord's interest in a rental unit whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent is liable with respect to the security deposit, until the occurrence of any of the following:

- (a) Transfer of the deposit to the landlord's successor in interest and written notification to the tenant by ordinary mail of the transfer and of the successor's name and address.
- (b) Compliance with section 4 by the successor in interest.
- (c) Return of the security deposit to the tenant.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.615 Action to enforce act.

Sec. 15. The attorney general or any affected individual may bring an action to enforce this act in a court of competent jurisdiction in the county where the defendant resides or does business.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

554.616 Effective date and applicability of act.

Sec. 16. This act takes effect April 1, 1973 and applies only to security deposits held pursuant to leases entered into, renewed or renegotiated after April 1, 1973.

History: 1972, Act 348, Eff. Apr. 1, 1973.

Popular name: Landlord-Tenant Act

TRUTH IN RENTING ACT
Act 454 of 1978

AN ACT to regulate rental agreements for residential premises; to prohibit the inclusion by lessors of certain clauses or provisions in residential rental agreements; to require the disclosure by lessors of certain information; to require the inclusion of certain provisions in residential rental agreements; to regulate the commercial sale of printed rental agreement forms; and to prescribe penalties.

History: 1978, Act 454, Eff. July 1, 1979.

The People of the State of Michigan enact:

554.631 Short title.

Sec. 1. This act shall be known and may be cited as the “truth in renting act”.

History: 1978, Act 454, Eff. July 1, 1979.

554.632 Definitions.

Sec. 2. As used in this act:

(a) “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.

(b) “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.

History: 1978, Act 454, Eff. July 1, 1979.

554.633 Rental agreement; prohibited provisions or clauses; violation.

Sec. 3. (1) A rental agreement shall not include a provision that does 1 or more of the following:

(a) Waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of fitness and habitability required pursuant to section 39 of 1846 RS 84, MCL 554.139.

(b) Provides that the parties waive a right established by 1972 PA 348, MCL 554.601 to 554.616, which regulates security deposits.

(c) Excludes or discriminates against a person in violation of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.

(d) Provides for a confession of judgment by a party.

(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.

(f) Waives or alters a party's right to demand a trial by jury or any other right of notice or procedure required by law in a judicial proceeding arising under the rental agreement.

(g) Provides that a party is liable for legal costs or attorney's 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.

(h) Provides for the acquisition by the lessor of a security interest in any personal property of the tenant to assure payment of rent or other charges arising under the rental agreement, except as specifically allowed by law.

(i) Provides that rental payments may be accelerated if the rental agreement is breached by the tenant, 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.

(j) Waives or alters a party's rights with respect to possession or eviction proceedings provided in section 2918 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2918, or with respect to summary

proceedings to recover possession as provided in chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5701 to 600.5759.

(k) Releases a party from a duty to mitigate damages.

(l) Provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant, or, in the case of a rental agreement between a consumer cooperative that provides housing and a member of the consumer cooperative, without the approval of the board of directors of the cooperative or other appropriate body elected by members who are also tenants of the cooperative, except that an agreement may provide for the following types of adjustments to be made upon written notice of not less than 30 days:

(i) Changes required by federal, state, or local law or rule or regulation.

(ii) Changes in rules relating to the property that are required to protect the physical health, safety, or peaceful enjoyment of tenants and guests.

(iii) Changes in the amount of rental payments 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.

(m) Violates the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

(n) Requires the tenant to give the lessor a power of attorney.

(2) A rental agreement shall 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.

(3) A provision or clause of a rental agreement that violates this section is void.

History: 1978, Act 454, Eff. July 1, 1979;—Am. 1979, Act 50, Imd. Eff. July 7, 1979;—Am. 1991, Act 131, Imd. Eff. Nov. 6, 1991;—Am. 1998, Act 72, Imd. Eff. May 4, 1998.

554.634 Rental agreement; mandatory statements.

Sec. 4. (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.”

History: 1978, Act 454, Eff. July 1, 1979.

554.635 Notices.

Sec. 5. (1) A lessor may cure a violation of section 3 by giving written notice to all tenants who are currently parties, with the lessor, to a rental agreement which contains a prohibited provision. The notice shall state that the provision is void and unenforceable or alter the provision to bring it into compliance with this act.

(2) A lessor may cure a violation of section 4 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 section 4.

(3) Notices under this section may be given personally or sent by first class or certified mail to the tenant at the address of the leased premises.

History: 1978, Act 454, Eff. July 1, 1979.

554.636 Actions; court costs and attorney fees; joinder; actual damages; effect of judicial construction; “tenant” defined.

Sec. 6. (1) If a rental agreement contains a provision which violates section 3, and if the landlord fails to cure the violation by exercising the notice provisions of section 5 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 section 5 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.

(2) If a rental agreement fails to contain a provision as required by section 4 or contains a provision which is explicitly and unambiguously prohibited by section 3, and if the landlord fails to cure the violation by exercising the notice provisions of section 5 within 20 days after the tenant, or, where there is more than one plaintiff, each tenant, gives written notice to the landlord of the provision required by section 4 or 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.

(b) To enjoin the lessor from including the provision which violates section 3 in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in section 5 to cure the violation in all rental agreements in which the provision occurs and to which the lessor is currently a party.

(c) To enjoin the lessor from failing to comply with section 4 in any rental agreement subsequently entered into and to require the lessor to exercise the notice procedure provided in section 5 to cure the violation.

(d) To recover damages in the amount of \$500.00, or actual damages, whichever is greater.

(3) A tenant may exercise the remedies of this section without the prior notice to the landlord required by subsections (1) and (2) 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 section 3 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 section 3 at the time the rental agreement was entered into.

(c) If a rental agreement does not include a provision as required by section 4 and the lessor actually knew that the provision was not included as required at the time the rental agreement was entered into. As used in subdivisions (b) and (c), "actual knowledge" shall 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 section 5 relating to the same provision which is the subject of the current action.

(4) A party who prevails in an action under this section is entitled to recover court costs plus statutory attorney fees.

(5) All actions brought under subsection (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. However, this subsection does not prohibit a tenant from recovering actual damages, if any, with respect to an unlawful provision of a rental agreement. As used in this subsection, "action" means a court action instituted by a single plaintiff, a representative plaintiff, or multiple plaintiffs.

(6) If a rental agreement contains the provisions as required by section 4 but contains a provision which violates this act, solely because of a judicial construction by a court of record of a provision of a statute cited in section 3 in an action to which the lessor was a party, the lessor shall not be subject to the penalties of this act unless the lessor fails to cure the violation by exercising the notice provisions of section 5 within 30 days following the final determination by the court. For purposes of this subsection, section 39(2) of chapter 66 of the Revised Statutes of 1846, being section 554.139 of the Michigan Compiled Laws, shall not be considered to have been judicially construed as of the effective date of this act.

(7) For purposes of this section, "tenant" means a person who is currently a party to a rental agreement with the lessor.

History: 1978, Act 454, Eff. July 1, 1979.

554.637 Remedies cumulative.

Sec. 7. The remedies provided by this act shall be in addition to any other remedies provided by law, and the provisions of this act shall not limit a person's right to use any other cause of action available under law.

History: 1978, Act 454, Eff. July 1, 1979.

554.638 Printed rental agreement form; sale; violation; damages.

Sec. 8. A printed rental agreement form which fails to include a provision required by section 4, which contains a provision which expressly and unambiguously violates section 3, or which contains a provision

which, not less than 90 days before the sale, 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 shall not be offered for sale in this state by a commercial seller. A commercial seller who violates this section shall be liable for damages suffered by a purchaser of such a form in an action brought against the purchaser by a tenant under this act.

History: 1978, Act 454, Eff. July 1, 1979.

554.639 Waiver prohibited.

Sec. 9. The requirements of this act may not be waived.

History: 1978, Act 454, Eff. July 1, 1979.

554.640 Exception.

Sec. 10. This act shall not apply to a rental agreement entered into before the effective date of this act.

History: 1978, Act 454, Eff. July 1, 1979.

554.641 Effective date.

Sec. 11. This act shall not take effect until July 1, 1979.

History: 1978, Act 454, Eff. July 1, 1979.

CAMPGROUNDS **Act 162 of 1990**

AN ACT to provide certain remedies to owners and operators of certain campgrounds in case of disturbances, damage to property, nonpayment of rent, or unlawful presence on certain campgrounds; to allow for a lien in favor of campground owners and operators and to provide for its enforcement; and to prescribe certain powers of law enforcement officers.

History: 1990, Act 162, Eff. Mar. 28, 1991.

The People of the State of Michigan enact:

554.651 Definitions.

Sec. 1. As used in this act:

(a) "Campground" means that term as defined in section 12501 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12501 of the Michigan Compiled Laws, except that campground does not include land or sites operated by this state or the federal government, and does not include a membership campground.

(b) "Membership campground" means a campground that sells or offers to sell memberships that entitle persons to purchase, share ownership in, or rent a campground site or sites for a 1-time or periodic fee pursuant to a written membership contract or a purchase agreement.

(c) "Occupant" means a person who occupies a site in a campground.

(d) "Operator" means a person who owns or operates a campground, and includes the employees and agents of the person who owns or operates the campground.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.652 Removal of occupant, guest, or other individual from campground; grounds; civil rights.

Sec. 2. The operator of a campground may remove or cause to be removed from the campground, in the manner provided in this section, any occupant of the campground or guest of an occupant or other individual who, while on the premises of the campground, disturbs the peace and comfort of other occupants, who causes physical harm to the campground facilities, or who fails to pay rent at the rental rate agreed upon by the time agreed upon. However, admission to, or removal from, any campground shall not be based upon a person's religion, race, color, national origin, age, sex, height, weight, or marital status as prohibited under the Elliott-Larsen civil rights act, Act No. 453 of the Public Acts of 1976, being sections 37.2101 to 37.2804 of the Michigan Compiled Laws.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.653 Requesting occupant to depart as condition to removal from campground; contents of written request; return of unused portion of advance payment; remaining on campground as misdemeanor; penalty.

Sec. 3. Before an occupant is removed from a campground for a reason prescribed in section 2, the operator shall request that the occupant immediately depart from the campground. The request shall be in writing and shall include the reason or reasons for the request. If the occupant has paid in advance, the operator, at the time the request is given to the occupant, shall return to the occupant the unused portion of the advance payment. An occupant who remains or attempts to remain in a campground after being requested to leave for the reasons and in the manner prescribed in this act is guilty of a misdemeanor, punishable by a fine of not more than \$100.00, or imprisonment for not more than 30 days, or both.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.654 Disconnecting utilities; grounds; notice; written arrangement for payment of account; copy; payment agreement; reconnecting utilities.

Sec. 4. If an occupant has accumulated an outstanding account in excess of an amount equal to 3 nights' rent at a campground, the operator may disconnect the utilities of the occupant's recreational vehicle and give written notice to the occupant that the action is for the purpose of requiring the occupant to meet with the operator and arrange for payment of the occupant's account. The arrangement shall be in writing, and a copy shall be furnished to the occupant. Upon entering into a payment agreement, the operator shall reconnect the utilities of the recreational vehicle.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.655 Removal or arrest by law enforcement officer; service of warrant; care of personal property; refund.

Sec. 5. (1) If any occupant, guest of an occupant, or other individual engages in an act or omission for which an operator may remove a person under section 2, the operator may call upon any law enforcement officer for assistance. The law enforcement officer, upon the request of the operator, shall remove from the campground an occupant or other individual who violates in the presence of the officer section 2. If a warrant has been issued by the proper judicial officer for the arrest of any occupant or guest of an occupant, the officer shall serve the warrant, arrest the occupant or guest, and take the occupant or guest into custody.

(2) Upon arrest, with or without warrant for a violation of section 2, an occupant shall be considered to have given up any right to occupancy of the campground site, and the operator shall employ all reasonable and proper means to adequately care for any personal property which may be left on the campground site by the occupant and shall refund to the occupant any unused portion of money paid by the occupant for the occupancy of the campground site.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.656 Grounds for eviction.

Sec. 6. In addition to grounds for eviction established under this act, grounds for eviction may be established in a written lease agreement between the occupant and the operator.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.657 Lien generally.

Sec. 7. The operator has a lien upon all personal property left on the campground site for rent or other lawful charges incurred and not paid in the occupancy of the campground site, including expenses necessary for its preservation, or reasonably incurred in its sale pursuant to this act. The amount of the lien shall not exceed \$600.00. The lien attaches as of the date of nonpayment of the rent or other lawful charges.

History: 1990, Act 162, Eff. Mar. 28, 1991.

554.658 Enforcement of lien; sale of personal property; notice; advertisement; time and place of sale; redemption; inventory; lien searches; payment by prior lienholder; rights of purchaser in good faith; responsibility for procuring title; distribution of proceeds; records; donations to charity or other disposition of property; damages for noncompliance.

Sec. 8. (1) An operator's lien under section 7 shall be enforced only as provided in this section.

(2) An operator whose claim for rent or other lawful charges described in section 7 has not been satisfied may sell the personal property subject to the lien at a public sale, if the public sale conforms to this section.

(3) The occupant, and any person who is a titleholder in the personal property, shall be notified of the proposed sale of personal property to satisfy the claim of the operator by notice personally delivered or sent by first-class mail and by certified mail to the last known address of the occupant, if the occupant provided his or her address to the operator. Any person who has a lien on the personal property shall be notified of the proposed sale of the personal property to satisfy the claim of the operator by notice personally delivered or by first-class mail and by certified mail to the address of the lienholder. The notice shall include:

(a) An itemized statement of the operator's claim showing the amount due at the time of the notice and the date on which the amount became due.

(b) A demand for payment within a period of 30 days after delivery of the notice.

(c) A conspicuous statement, printed in not less than 10-point type, indicating that unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale and sold. The statement shall specify the time, place, and manner of the proposed sale.

(d) A description of the personal property. If the property is a motor vehicle, watercraft, snowmobile, ORV, pickup camper, mobile home, or other titled personal property, the description shall include the vehicle identification number or other appropriate identification number.

(e) The name, address, and telephone number of the operator.

(f) If the personal property is a vehicle, watercraft, snowmobile, ORV, pickup camper, mobile home, or other titled personal property, the name and address of the titleholder and any lienholders of record.

(4) After the expiration of the 30-day period in subsection (3)(b), an advertisement of the proposed sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the city, village, or township in which the campground is located. If there is no newspaper of general circulation in the city, village, or township in which the campground is located, the advertisement shall be posted at least 10

days before the date of the sale in not less than 6 conspicuous places in the city, village, or township in which the campground is located. The advertisement shall include all of the following:

(a) A brief, general description of the personal property subject to the lien. The description shall reasonably identify the property, except that any container, including but not limited to a suitcase, trunk, valise, or box, that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The address of the campground and, if known to the operator, the name of the occupant and the name of the titleholder of the personal property.

(c) The time, place, and manner of the proposed sale.

(5) The sale shall take place not sooner than 30 days after the first publication or posting. A sale of the personal property shall be held at the campground or at the nearest suitable place.

(6) Before a sale of personal property pursuant to this section, the occupant, the titleholder, or a lienholder may pay the amount necessary to satisfy the lien, including the reasonable expenses incurred by the operator under this section, and redeem the personal property. Upon receipt of this payment, the operator shall return the personal property to the occupant, titleholder, or lienholder who made the payment, in the same condition, or substantially the same condition, as it was in when it was left at the campground by the occupant.

(7) Before a sale of personal property pursuant to this section, the operator shall complete an inventory of the personal property.

(8) Before a sale of a motor vehicle or other titled personal property pursuant to this section, the operator shall contact the appropriate agency of the federal, state, or local government where liens are recorded on that type of personal property to determine the name and address of any registered owners, titleholders, and lienholders, and the operator shall notify every such registered owner, titleholder, and lienholder of the time and place of the proposed sale. Failure to make the lien searches required by this subsection shall result in liability only to valid lienholders injured by that failure.

(9) Before a sale of personal property pursuant to this section, a holder of a prior lien on any of the property to be sold may pay the operator the amount of the operator's lien attributable to storage of the property, including the reasonable expenses incurred by the operator under this section. A payment made to the operator shall be added to the amount of the lien of the prior lienholder who made the payment, and shall be subtracted from the amount of the operator's lien.

(10) A purchaser in good faith of the personal property sold under this section takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the operator with the requirements of this section.

(11) A person who acquires a motor vehicle, boat, or recreational vehicle pursuant to this section is responsible for procuring a title to the motor vehicle, boat, or recreational vehicle from the secretary of state. The operator who conducts the sale shall provide to the purchaser, titleholder, and lienholder a signed written statement that the operator has complied with the provisions of this act regarding sales of personal property.

(12) In a sale under this section, the party conducting the sale shall distribute the proceeds in the following sequence:

(a) First, to satisfy the operator's lien pursuant to section 7, minus any amount already paid to the operator pursuant to subsection (9).

(b) Second, to satisfy outstanding balances owed to prior perfected lienholders.

(c) Third, in the case of the sale of a motor vehicle, boat, or recreational vehicle, the title to which is held by a person other than the occupant, any proceeds remaining after the distribution is made under subdivision (a) or (b) shall be returned to the titleholder of the motor vehicle, boat, or recreational vehicle.

(d) Fourth, any proceeds of the sale remaining after the distribution is made under subdivision (a), (b), or (c) shall be returned to the occupant by mailing the proceeds to the occupant's last known address by certified mail and by notifying the occupant by first-class mail. If the occupant does not claim the remaining proceeds within 2 years after the date of sale, the remaining proceeds shall escheat to the state.

(13) The operator shall maintain proper records of money received in any sale held under this section, and the records shall be subject to audit by the state.

(14) The operator shall dispose of any property offered for sale but not purchased by donating it to a charitable organization or, if the property is not accepted by a charitable organization, by any other means.

(15) An occupant who suffers damages because of an operator's failure to comply with this act may bring an action in a court of appropriate jurisdiction for the actual amount of the damages or \$250.00, whichever is greater, together with reasonable attorney's fees.

History: 1990, Act 162, Eff. Mar. 28, 1991.

FARMLAND AND OPEN SPACE PRESERVATION ACT
Act 116 of 1974

554.701-554.719 Repealed. 1995, Act 59, Imd. Eff. May 24, 1995.

LIVING CARE DISCLOSURE ACT
Act 440 of 1976

554.801-554.844 Repealed. 2014, Act 448, Eff. Apr. 2, 2015.

DISCLAIMER OF PROPERTY INTERESTS ACT
Act 131 of 1996

554.871-554.890 Repealed. 1998, Act 386, Eff. Apr. 1, 2000.

CONTINUING CARE COMMUNITY DISCLOSURE ACT
Act 448 of 2014

AN ACT to regulate the offer and sale of life interests and long-term leases in retirement communities that provide certain services and are independent living units, nursing homes, homes for the aged, adult foster care facilities, home care service agencies, hospices, or places that provide care for certain periods; to prohibit fraudulent practices in relation to the offer and sale of those life interests and long-term leases; to provide for the powers and duties of certain state governmental agencies; to provide for penalties and remedies; to prescribe penalties and civil sanctions; and to repeal acts and parts of acts.

History: 2014, Act 448, Eff. Apr. 2, 2015.

The People of the State of Michigan enact:

554.901 Short title.

Sec. 1. This act shall be known and may be cited as the "continuing care community disclosure act".

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.903 Definitions; A to C.

Sec. 3. As used in this act:

(a) "Administrator" means a person that performs administrative or operational functions within or in connection with the continuing care community.

(b) "Advertisement or marketing communication" means any disclosure statement, prospectus, pamphlet, circular, form letter, written or electronic advertisement, social media or other sales literature or advertising communication, including a written, printed, or pictorial communication, or a communication by means of a recorded telephone message or message spoken on the radio, television, or similar communications media, intended for distribution or transmission to prospective members in connection with an offer or sale of a continuing care agreement.

(c) "Amortized component of an entrance fee" means the portion of an entrance fee that is amortizable to reflect the cost of continuing care, multiplied by 1.5% for each month from the time of occupancy to the termination of membership by death or other cause.

(d) "Applicant" means a continuing care community applying for initial registration under section 19, applying for renewal registration under section 25, or applying to amend a registration under section 33.

(e) "Change in fees" means a change in either the amount or type of fees for continuing care, including entrance fees and monthly service fees, except for any change in fees mandated by a state or federal referral assistance program.

(f) "Complete", with reference to an application, means complete on its face and submitted with any registration fee and any other information, record, approval, or similar item required by law or rule.

(g) "Continuing care" means some or all of the following services:

(i) A living unit.

(ii) Meals.

(iii) Personal care services.

(iv) Skilled nursing.

(v) Rehabilitative services.

(vi) Medical care.

(vii) Social activities.

(viii) Supervision.

(ix) Program of all-inclusive care for the elderly.

(x) Continuing care at home.

(h) "Continuing care agreement" means a written agreement, including a long-term lease or an agreement conferring a life interest, between a member and a continuing care community for continuing care upon payment of an entrance fee.

(i) "Continuing care at home" means, upon payment of an entrance fee, providing or arranging for the provision of all of the following at the member's home:

(i) Continuing care.

(ii) Access to comprehensive services, including, but not limited to, care coordination, home assessments, and assistance with activities of daily living.

(iii) Services with a higher level of care when required by the health condition of the member, as determined by the continuing care community in consultation with the member or the member's

representative.

(j) "Continuing care community" or "community" means a retirement community in which a person undertakes to provide or arrange for continuing care and which is 1 or more of the following:

(i) An adult foster care facility.

(ii) A home for the aged.

(iii) An independent living unit.

(iv) A nursing home.

(v) A home health care services agency.

(vi) Hospice.

(vii) A place that undertakes to provide care to a member for more than 1 year.

(k) "Continuing care administration fund" means the fund creation in section 31(3).

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.905 Definitions; D to L.

Sec. 5. As used in this act:

(a) "Department" means the department of licensing and regulatory affairs.

(b) "Disclosure statement" means a disclosure statement as required under section 19(1)(c) or that may be required by the department under section 25, as applicable.

(c) "Entrance fee" means money paid in a lump sum or installments or property transferred pursuant to a continuing care agreement before initiation of continuing care for 1 or more individuals and that confers the right to the continuing care.

(d) "Executive officer" means an individual holding executive power in an organization and generally responsible for the day-to-day operations of the organization, such as a chief executive officer, chief financial officer, or chief operating officer.

(e) "Initiation of continuing care" means the commencement of a member's right to possess a living unit in a continuing care community or the commencement of the actual provision of continuing care, whichever occurs first.

(f) "Life interest" means the right, upon payment of an entrance fee, to receive continuing care for life.

(g) "Living unit" means a physical space within a continuing care community set aside for the exclusive use or control of 1 or more specific members.

(h) "Long-term lease" means an agreement between a member and a continuing care community whereby the member has the right to occupy a space for more than 1 year but not for the life of the member.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.907 Definitions; M to O.

Sec. 7. As used in this act:

(a) "Member" means an individual who enters into a continuing care agreement with a continuing care community.

(b) "Monthly service fee" means a monthly charge to a member for continuing care and not as rent, or a daily prorated portion thereof.

(c) "Nonrefundable portion of the entrance fee" means the amortized component of an entrance fee and any other component of an entrance fee that is not refundable upon termination of the member under the terms and conditions of a continuing care agreement.

(d) "Offer of a continuing care agreement" includes an attempt to offer to sell, or a solicitation of an offer to enter into, a continuing care agreement.

(e) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the department.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.909 Definitions; P to R.

Sec. 9. As used in this act:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Publish" means to publicly issue or circulate by newspaper, mail, radio, television, or electronic means or otherwise to disseminate to the public.

(c) "Refundable portion of an entrance fee" means the component of an entrance fee that is refundable to the member or his or her estate under the terms and conditions of the continuing care agreement, but excludes the amortized component of an entrance fee.

- (d) "Registrant" means a continuing care community registered under this act.
- (e) "Reportable change", subject to subdivision (f), means any of the following:
- (i) Any change in the tax status of the continuing care community.
- (ii) Termination of the continuing care community's sponsorship, or a portion thereof, by a religious, nonprofit, or proprietary organization or group, or the establishment of any new sponsorship for the community.
- (iii) Denial, suspension, or revocation of any license, certification, or registration held by the continuing care community and required by state or federal law.
- (iv) The entry of any cease and desist order, other order similar in nature, or a temporary or permanent injunction by a court of competent jurisdiction that restricts the continuing care community from offering continuing care agreements to prospective members or restricts the community from operating in any material respect in compliance with the most recent registration.
- (v) Any substantive amendments or changes in the disclosure statement, continuing care agreement, or the rules and regulations of the continuing care community.
- (vi) Any significant alteration in the care, amenities, or services indicated in the disclosure statement or continuing care agreement.
- (vii) Any change in monthly service fees.
- (viii) A variation of 10% or more between the actual amount of any of the following items and the amount forecast in the continuing care community's pro forma financial plan most recently filed under this act:
- (A) Total assets.
- (B) Total liabilities.
- (C) Equity.
- (D) Fund balance or deficit.
- (E) Long-term debt.
- (F) Total revenue.
- (G) Total expenses.
- (H) Cash flow.
- (ix) A violation of any debt covenant applicable to the continuing care community.
- (f) "Reportable change" does not include a change in the value of an interest rate swap not related to the termination of the interest rate swap.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.911 Definitions; S.

Sec. 11. As used in this act:

- (a) "Sale of a continuing care agreement" means the execution of a continuing care agreement.
- (b) "Sell a continuing care agreement" means to secure the sale of a continuing care agreement.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.913 Continuing care community; organization and operation; purpose; member to service in advisory capacity.

Sec. 13. (1) A continuing care community shall be organized and operated as either a for-profit or nonprofit entity. The entity's purposes shall be limited to ownership, organization, and operation of the continuing care community.

(2) Each continuing care community shall elect or appoint at least 1 member, along with an alternate, to serve in an advisory capacity to its governing body. The member shall be notified in advance of and invited to attend all meetings of the governing body. The member shall not have a vote unless the governing body grants such voting rights. The continuing care community is responsible for expenses incurred by the member representative in fulfilling his or her duties under this section.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.915 Continuing care agreement; registration or exemption required; applicability to written or oral arrangements; offer or sale; conditions; circumstances.

Sec. 15. (1) Subject to subsections (3) and (4), a person shall not offer to enter into or enter into a continuing care agreement unless the person is registered or exempt from registration under this act.

(2) Subject to subsections (3) and (4), this act applies to all written or oral arrangements between a continuing care community and a member or prospective member in connection with the offer or the sale of a continuing care agreement.

(3) An offer or sale of a continuing care agreement is subject to this act if any of the following apply:

- (a) Subject to subsection (4), the offer is made or accepted in this state.
- (b) The continuing care community is or will be operated in this state.
- (c) The offer originates from this state and is received at the place to which the offer is directed.
- (d) The offer is directed by the offeror to this state and is received in this state.
- (4) An offer of a continuing care agreement shall not be considered to be made in this state solely because of 1 or more of the following circumstances:
 - (a) Circulation in this state, by or on behalf of a publisher, of a bona fide newspaper, electronic media, or other publication of general, regular, and paid circulation that has had more than 2/3 of its circulation outside this state during the past 12 months.
 - (b) Reception in this state of a radio or television program originating outside this state.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.917 Rules; exemption; variance; area not considered home for the aged or adult foster care facility; relationship not subject to laws between landlord and tenant.

Sec. 17. (1) A continuing care community that is licensed in whole or part under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from any rules promulgated under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, that would interfere with a resident's access to a common area, subject to the resident's need for care and supervision.

(2) A continuing care community may request a variance from the application of a rule promulgated under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or promulgated under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, and applicable to a home for the aged or adult foster care facility, respectively, that is part of the continuing care community. The department of human services shall grant the variance upon a finding of both of the following:

(a) That the rule unnecessarily segregates members of the continuing care community who reside in the home for the aged or adult foster care facility from other members of the continuing care community.

(b) That the variance will not result in a risk to human health or safety.

(3) An area where room and board together with personal care, protection and supervision, or supervised personal care are provided to a member is not a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, or an adult foster care facility as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, if the services are only provided on a temporary basis under any of the following circumstances:

(a) While the member is recovering from an illness or accident.

(b) Until a living unit in an appropriate licensed area of the continuing care community becomes available.

(4) The relationship between a continuing care community and a member or prospective member is not subject to laws regulating the relationship between a landlord and a current or prospective tenant.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.919 Initial registration; submission of information; missing or unreliable information; cost of investigation; deposit of payment; registration of 2 or more retirement communities as single continuing care community; consideration of opinions, appraisals, and reports of experts; electronic transmission of application and fee.

Sec. 19. (1) A person seeking initial registration under this act shall submit the following information to the department:

(a) An initial registration application on a form prescribed by the department, signed and verified by an individual authorized to act on behalf of the continuing care community.

(b) The organizing documents of the applicant, and all amendments thereto, authorizing the applicant to conduct business in this state and a copy of the most recent annual report, if required under state law.

(c) A disclosure statement that complies with section 37.

(d) A copy of each form of continuing care agreement for the continuing care community, which shall comply with section 39, and all exhibits or addenda to each form of continuing care agreement.

(e) A copy of any rules, policies, and procedures of the applicant required for compliance with this act.

(f) A statement, on a form prescribed by the department, of whether any of the following apply to any executive officer, administrator, or director identified in the application for registration:

(i) Has been convicted of a felony or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(ii) Is subject to an injunctive or restrictive order or federal or state administrative order relating to

business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a continuing care community, foster care facility, nursing home, retirement home, or home for the aged. The statement shall, if applicable, specify the court or agency, any penalty imposed or damages assessed, and the date of conviction or judgment or the date, nature, and issuer of the order.

(g) An executed irrevocable consent to service of process subject to section 61.

(h) Financial statements that comply with section 41.

(i) Unless waived by the department, a statement of the use of proceeds of entrance fees to be collected by the continuing care community.

(j) A pro forma financial plan that complies with section 43.

(k) A feasibility study, unless waived in the reasonable discretion of the department. The feasibility study shall be made available for review upon the request of a member or prospective member. The department may require the feasibility study to include 1 or more of the following:

(i) A statement of the purpose of the continuing care community and the need for the proposed services.

(ii) Documentation of the financial resources to be made available for the continuing care community.

(iii) A plan demonstrating the financial feasibility of the proposed continuing care community, including future funding sources.

(iv) An actuarial forecast that has been reviewed by a qualified actuary.

(v) A study demonstrating the proposed market for the continuing care community.

(vi) A detailed statement of the continuing care services to be offered.

(l) For a continuing care community seeking to offer continuing care at home, both of the following:

(i) A detailed business plan on how the needs and requirements of the members receiving continuing care at home will be met.

(ii) Agreements showing how and under what circumstances future specialized care, including assisted living, dementia care, and skilled nursing, will be provided when appropriate.

(m) Other material information as may reasonably be required by the department.

(n) Other material information as the applicant wishes to include.

(o) The initial registration application fee specified in section 31.

(2) If information required pursuant to subsection (1)(m) is not furnished by the applicant, or the department considers information submitted pursuant to subsection (1)(m) to be unreliable or substantially incomplete, the department may investigate any matters concerning the missing or unreliable information. The applicant shall pay the actual cost of the investigation as determined in the reasonable discretion of the department. The payment shall be deposited in the continuing care administration fund.

(3) An applicant may request and the department may order that 2 or more retirement communities be registered as a single continuing care community.

(4) The department may consider the opinions, appraisals, and reports of engineers, appraisers, or other experts presented by an applicant or an interested party on a question of fact concerning or affecting the continuing care agreements proposed to be offered and sold.

(5) An applicant may electronically transmit an application and fee for initial registration or renewal of registration to the department after the department posts notice on its website that it is prepared to receive those electronic filings.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.921 Incomplete application; notification; order approving or denying registration.

Sec. 21. (1) Effective 60 days after the department receives a registration application, the application shall be considered to be complete unless the department proceeds as provided in subsection (2).

(2) If, before the expiration of the 60-day period under subsection (1), the department notifies the applicant that the application is not complete, specifying the information necessary to make the application complete or stating that the fee required to accompany the application has not been paid and specifying the amount due, the running of the 60-day period under subsection (1) is tolled until the applicant submits to the department the specified information or fee amount due.

(3) Not more than 180 days after the expiration of the 60-day period under subsections (1) and (2), the department shall enter an order registering the continuing care community or denying the registration and submit a copy of the order to the applicant. An order approving a registration shall specify the expiration date of the registration. If the department denies registration, the order shall specifically describe the deficiencies in the registration application or instances of noncompliance by the applicant with the requirements of this act.

(4) If an order approving or denying registration is not timely entered under subsection (3), the registration

is immediately effective unless the applicant has consented in writing to a waiver or delay of automatic effectiveness.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.923 Effect of order approving or filing registration.

Sec. 23. (1) The fact that an application for registration has been filed or approved does not constitute any of the following:

(a) Approval of or a finding regarding the accuracy of any information in or accompanying the registration application.

(b) A recommendation, approval, or other finding by the department concerning the merits or qualifications of a person, life interest, long-term lease, transaction, or continuing care community.

(2) A person shall not make or cause to be made to a prospective member a representation inconsistent with this section.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.925 Renewal of registration; application form to be sent by department.

Sec. 25. (1) Except as otherwise provided in this act, the department shall renew the registration of a registrant that does all of the following:

(a) On or before the expiration date printed on the registration, submits to the department an application for renewal of registration on a form provided by the department and accompanied by such information described in section 19 as may be required by the department.

(b) Pays the fee required under section 31.

(2) A reasonable time before a registrant's registration expires, the department shall send a renewal application form to the registrant's last postal mailing address or electronic address on file with the department. The failure of the department to comply with this subsection does not relieve the registrant of the responsibility to timely file an application for renewal of registration.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.927 Application for registration renewal; processing; failure to submit application or fee; continuation of current registration; failure to file renewal application.

Sec. 27. (1) Subject to subsections (2) and (3), an application for renewal of registration shall be processed in the same manner as an initial registration application under section 21.

(2) If, within 60 days after receiving notice from the department under section 21(2), an applicant fails to submit to the department the specified information or fee amount due, the department may deny the registration renewal application.

(3) If an applicant files an application for renewal of registration as provided in section 25(1), the current registration continues in effect until a new registration renewal order is issued or denied or the department revokes the registration.

(4) If a registrant fails to file an application for renewal of registration as provided in section 25(1), both of the following apply:

(a) The registration lapses effective the day after the expiration date specified in the order under section 21.

(b) The continuing care community shall not enter or offer to enter a continuing care agreement after the expiration date unless the community is reregistered pursuant to sections 19 and 21.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.929 Extension of registration; requirements; fees.

Sec. 29. (1) The department may extend the term of an existing registration for a continuing care community for not more than 3 fiscal years if the department determines that all of the following requirements are met:

(a) The continuing care community was registered under this act during the immediately preceding 5 fiscal years.

(b) The continuing care community meets all of the following financial requirements:

(i) Has not committed a material default in the payment of principal or interest on its indebtedness during the immediately preceding 3 years.

(ii) Has had income or revenues in excess of its expenses in each of the immediately preceding 3 years.

(iii) Has a ratio of current assets to current liabilities of not less than 1:1.

(iv) Has reserves or funds designated for the payment of its indebtedness in an amount equal to or greater than 1 year's debt service.

(c) The continuing care community or any person with joint and several liability is not the subject of any action under sections 55 to 63.

(2) Notwithstanding the grant of an extension of its registration, a continuing care community shall annually submit to the department the registration renewal fees specified in section 31 and annual and semiannual financial statements under section 41. A registered continuing care community shall do all of the following:

- (a) Submit the fees specified in section 31.
- (b) Submit financial statements for that fiscal year that comply with section 41.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.931 Fees; continuing care administration fund; creation; disposition; investment; money remaining at close of fiscal year; expenditures.

Sec. 31. (1) The fee for filing an application for initial registration of the offer or sale of continuing care agreements or continuing care at home agreements is \$250.00. If an application for registration is withdrawn before the effective date of registration or a stop order is issued before that date, the department shall retain the following:

- (a) A fee of \$25.00 if the initial review has not been commenced.
- (b) The full application fee if the review has commenced.
- (2) The fee for filing an application for registration renewal is \$100.00.

(3) The continuing care administration fund is created within the state treasury. Fees collected by the department under this act shall be deposited into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) The department shall expend money from the continuing care administration fund, upon appropriation, only for the purposes of administration and enforcement of this act.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.933 Reportable changes; amendment of registration.

Sec. 33. (1) A registrant shall notify the department promptly in writing within 45 days of any reportable change with respect to the continuing care community measured semiannually.

(2) A registrant shall submit to the department an application to amend a registration to address reportable changes. The disclosure statement and each form of continuing care agreement for the continuing care community, including all exhibits or addenda, shall be in a format that identifies revisions to the last documents approved by the department. If required by the department, the application to amend a registration shall include a pro forma financial plan that complies with section 43. The department may require the production of other financial information reasonably necessary for the purposes of this act. The amended registration shall be signed and verified by the administrator.

(3) Effective 30 days after the department receives an application to amend a registration, the application shall be considered to be complete unless the department proceeds as provided in subsection (4).

(4) If, before the expiration of the 30-day period under subsection (3), the department notifies the applicant that the application is not complete, specifying the information necessary to make the application complete, the running of the 30-day period under subsection (3) is tolled until the applicant submits to the department the specified information or fee amount due.

(5) Not more than 30 days after the expiration of the 30-day period under subsections (3) and (4), the department shall enter an order approving or denying the amendment and submit a copy of the order to the applicant. If the department denies the amendment, the order shall specifically describe the deficiencies in the application or instances of noncompliance by the applicant with the requirements of this act.

(6) If an order approving or denying an amendment is not timely entered under subsection (5), the amendment is immediately effective unless the applicant has consented in writing to a waiver or delay of automatic effectiveness.

(7) An amendment to an application filed after the effective date of the registration and approved by the department under subsection (5) takes effect on the date determined by the department, having due regard for the public interest and the protection of prospective members.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.935 Delivery of continuing care agreements, emergency plan, and disclosure statement;

availability of feasibility study.

Sec. 35. (1) A continuing care community shall deliver to a prospective member all continuing care agreements pertinent to the continuing care sought by the prospective member, the continuing care community emergency plan in case of power outage, and the disclosure statement most recently approved by the department. The delivery shall be by a method considered acceptable by the continuing care community and the prospective member and shall occur by the earlier of the following:

(a) The continuing care community's acceptance of a nonrefundable application fee from the prospective member, unless all of the following apply:

(i) The nonrefundable application fee does not exceed \$500.00.

(ii) The availability of a disclosure statement is disclosed in writing to the prospective member.

(iii) A disclosure statement is made available to the prospective member upon request.

(b) The prospective member's payment of at least 10% of the total entrance fee to reserve a living unit.

(2) Upon execution of the continuing care agreement and payment of the full entrance fee amount, the continuing care community shall provide the member with a physical copy of both of the following:

(a) The executed continuing care agreement.

(b) A physical copy of the disclosure statement, unless a physical copy has already been provided under subsection (1).

(3) A continuing care community shall make the feasibility study required under section 19 available for review by a member or prospective member upon request.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.937 Disclosure statement.

Sec. 37. (1) Subject to subsection (3), a disclosure statement shall include at a minimum the following information, unless waived by the department in the reasonable exercise of discretion:

(a) The name and address of the continuing care community and its affiliated parent or subsidiary business entity or partnership.

(b) The organization of the legal entity of the continuing care community as prescribed by the department.

(c) Whether the continuing care community or an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization. If the continuing care community uses a name designating or inferring a religious affiliation, a statement explaining the relationship with the religious organization or group or a statement that there is no relationship shall be included.

(d) Information concerning the identity and experience of persons affiliated with the continuing care community as the department shall prescribe.

(e) Whether the continuing care community participates in medicare or medicaid programs, or both.

(f) If the department has waived the submission of audited financial statements pursuant to section 41, a statement that an individual who purchases membership in a continuing care community during that period is entitled to damages or rescission under the same terms as provided in section 77 if, upon the availability of audited financial statements or any other valid basis, the department finds in the reasonable exercise of its discretion that material adverse financial conditions existed as of the date of the financial statements which were not disclosed.

(g) A statement that registration does not constitute approval of or a finding regarding the accuracy of any information in or accompanying the registration application.

(h) The entrance fee, any monthly services fees, and any other fees or charges that may be assessed to a member or prospective member by the continuing care community.

(i) All of the following statements as to the effect of the death of a member on the continuing care agreement:

(i) If, before receiving continuing care from the continuing care community, a member dies before occupying the continuing care community, or through illness, injury, or incapacity is precluded from being a member under the terms of the continuing care agreement, the continuing care agreement is automatically canceled and the member or a legal representative of the member shall receive a full refund of all money paid to the continuing care community. However, costs incurred by the continuing care community at the request of the member and set forth in writing in a separate addendum are not required to be refunded.

(ii) If a member dies within the 7-day rescission period under subdivision (j), the continuing care agreement automatically terminates, and the continuing care community shall within 30 days refund any entrance fee or portion of an entrance fee paid.

(iii) If a member dies after the 7-day rescission period under subdivision (j), the continuing care agreement terminates as follows:

(A) As of the date that all possessions of the deceased member are removed from the living unit if the

deceased member was the sole occupant. The entrance fee shall be refunded within 30 days after the fulfillment of the conditions for a refund set forth in the continuing care agreement.

(B) Immediately if the deceased member occupied a living unit with another member. Any refundable portion of the deceased member's entrance fee shall be refunded within 60 days after the death of that member, but the continuing care agreement shall remain in effect for the living member.

(C) Immediately if the continuing care agreement is for continuing care at home. The refund shall be paid within 60 days after death of the member.

(j) A statement that a member may rescind without penalty a continuing care agreement within 7 days after executing the agreement and that the entrance fee or the portion of the entrance fee paid by the member shall be held by the continuing care community for the benefit of the member in a separate escrow account during that 7-day rescission period. A member shall not be required to initiate continuing care before the expiration of the 7-day rescission period.

(k) A statement that following the 7-day rescission period under subdivision (j), termination of a continuing care agreement by the member, other than by the member's death, will result in a refund of the entrance fee within 30 days after the fulfillment of the conditions for a refund set forth in the continuing care agreement. If the continuing care agreement is for continuing care at home, the refund shall be paid within 60 days after termination.

(l) A statement that monthly service fees and other fees assessed to a member are subject to increase by the continuing care community based on the reasonable cost of operations including the provision of care and services, and that the continuing care community shall give advance notice of not less than 60 days to the member before a new fee or change in a fee becomes effective.

(m) A statement that members may be charged assessments and a statement of the method used to allocate any assessment.

(n) A statement that the continuing care agreement is subject and subordinate to any mortgages on the property or any other creditors with a preferred status.

(o) Whether entrance fees are subject to an escrow under section 45(2) or an alternative financial arrangement under section 47, including a description of any applicable arrangement.

(p) The proposed application of the proceeds of the entrance fee by the continuing care community.

(q) The location and description of any premises that are used or proposed to be used for the provision of continuing care.

(r) A description of the continuing care services provided and the extent to which medical care is furnished.

(s) A description of the health and financial conditions required for a member to qualify for or to remain in the continuing care community, including temporary or permanent transfer of the member from his or her original living unit to a different type of living unit or different level of care or services, and whether a temporary or permanent transfer may result in termination of the continuing care agreement.

(t) A statement that the refundable portion of the entrance fee is equal to the total entrance fee paid less all of the following:

(i) The nonrefundable portion of the entrance fee.

(ii) A sales cost in conjunction with the continuing care agreement, not to exceed 8% of the entrance fee.

(iii) Any balance owed to the continuing care community for monthly service fees or other charges under the continuing care agreement.

(iv) A refurbishing fee that is the greater of 4% of the entrance fee or the actual costs of refurbishing the living unit if actual costs are known at the time of the refund and if an itemized list of actual costs is provided to the member.

(u) A detailed description of how the entrance fee refund is affected if a member moves from his or her original living unit to a different living unit.

(v) Whether the continuing care agreement terminates and whether a refund of the entrance fee is due if a member permanently or temporarily transfers to a different level of care within the continuing care community.

(w) The conditions upon which a member may reoccupy the member's living unit after termination of the continuing care agreement.

(x) The fees that will be charged if a member of the continuing care community marries, the terms and conditions as to membership in the continuing care community by the new spouse of a member or in the event of the divorce of a member, and the consequences if the new spouse does not meet the requirements for membership.

(y) The circumstances under which a person will be permitted to remain a member of the continuing care community in the event of possible financial difficulties of the member.

(z) Whether, if financial assistance is provided to the member through a charitable fund, a spend down of the entrance fee otherwise required for continued membership, or a reduction of monthly service fees or other fees assessed under the continuing care agreement or under some other arrangement, the financial assistance will be subject to either of the following:

(i) Be offset from the entrance fee refund due to the member or the member's estate upon termination of the continuing care agreement and upon removal of all possessions of the member or deceased member from the unit.

(ii) Vest in the continuing care community in the form of a claim for repayment of such financial assistance against the member or the member's estate.

(aa) An annual financial statement under section 41 as an attachment to and integral part of the disclosure statement.

(bb) Other material information as required by the department.

(cc) Other material information that the applicant wishes to include.

(dd) The following items in the beginning of the disclosure statement, in all capital letters, and in substantially the following language:

(i) "You may cancel the purchase and receive a full refund less damages to the living unit within 7 days after either making a deposit and receiving a copy of the disclosure statement or executing the continuing care agreement. You are not required to move into the continuing care community before the expiration of this 7-day period."

(ii) "The purchase of a life interest or long-term lease is an investment that may involve a major financial commitment, and you should seek advice from an attorney or other financial advisor who is independent of the continuing care community."

(iii) "This disclosure statement is required by law to contain all material facts regarding the offering it makes. No person is authorized to make any promises in connection with this offering other than those contained in this disclosure statement."

(iv) "The department of licensing and regulatory affairs has not passed upon the accuracy of this disclosure statement or approved or disapproved of the offering described herein. Any representation to the contrary is unlawful and should be reported to the department."

(v) "If you enter into a life interest or long-term lease during the period when financial statements submitted by the continuing care community to the department of licensing and regulatory affairs are unaudited, you are entitled to damages or rescission if the department finds in the reasonable exercise of its discretion that material adverse conditions existed at the date of the financial statements and were not disclosed."

(vi) "More complete information is on file with the department of licensing and regulatory affairs and is available free of charge at the offices of the continuing care community."

(2) Subject to subsection (3), a disclosure statement shall be set forth in not less than 12-point type. The department may prescribe the format of a disclosure statement and may require an applicant to set forth any of the following in its disclosure statement in a specified position and type size:

(a) Potential adverse information.

(b) That registration does not constitute approval, recommendation, or endorsement by the department.

(3) The department shall accept, in place of the disclosure statement that meets the requirements set forth in subsections (1) and (2), a disclosure statement form required by a federal government agency or a government agency of another state that the department has determined by rule or order to meet the requirements of this section.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.939 Continuing care agreement; requirements.

Sec. 39. A continuing care agreement shall meet all of the following requirements:

(a) Specify in reasonable detail the rights, privileges, liabilities, and obligations of each party to the continuing care agreement with respect to the statements included in the disclosure statement under section 37(1)(h) to (cc).

(b) Specify whether a continuing care agreement may be terminated due to a material breach by either party and if so, what constitutes a material breach.

(c) Specify that the continuing care community may provide access to an adequate alternative facility that will provide care for the member, in place of or in mitigation of any damages.

(d) Specify that the continuing care community will not terminate a member without 30 days' written notice unless the continuing care community provides access to an adequate alternative facility.

(e) Each continuing care agreement shall be set forth in not less than 12-point type. The department may

prescribe the format of a continuing care agreement or require a continuing care community to set forth in a continuing care agreement potential adverse information in designated positions and in a type size specified by the department.

(f) Specify that a continuing care agreement does not confer a property interest, an individual or partial ownership of a continuing care community, or voting rights in the operation of a continuing care community.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.941 Financial statements; requirements.

Sec. 41. (1) Financial statements under section 19, 25, or 29 shall meet all of the following requirements:

(a) Be submitted with a statement of any adverse material changes in the financial condition of the entity from the date of the financial statement.

(b) Subject to subdivision (c), be of form and content required by the department.

(c) Not be consolidated financial statements except under circumstances prescribed by the department. Requirements imposed by the department under subdivision (b) or this subdivision shall be consistent with generally accepted accounting principles or other nationally recognized accounting standards applicable to the entity.

(d) Be submitted within 120 days after the end of the entity's fiscal year.

(e) Be audited and prepared by a certified public accountant in accordance with generally accepted auditing standards, subject to all of the following:

(i) The department may waive all or part of this requirement if it is not necessary for the protection of the public. The department may impose conditions and restrictions on the waiver that it considers appropriate.

(ii) Unaudited financial statements may be submitted if the entity has not been in existence for 1 complete fiscal year.

(iii) If the audited financial statements are more than 120 days old, they shall be submitted with current unaudited financial statements.

(iv) Unaudited financial statements authorized under subparagraph (i), (ii), or (iii) shall be accompanied by the following written disclosure, or a substantially equivalent statement, immediately adjacent thereto, in all capital letters and at least 14-point type:

"These financial statements are prepared without audit. A certified public accountant has not examined the financial statements and accordingly has expressed no opinion on them."

(2) Audited financial statements filed with the department shall include a consent of the certified public accounting firm, signed and dated at or near the effective date of the audit, approving the use of its name and its opinion in the continuing care community's disclosure statements and registration application. In the case of a substantial delay in effectiveness or an adverse material change in the filing, the department may require an updated consent.

(3) If the independent certified public accountant engaged as the principal accountant to audit the continuing care community's financial statements was not the principal accountant for the continuing care community's most recently filed audited financial statements, or a legal successor thereto, then all of the following apply:

(a) The continuing care community shall furnish the department with a statement of the date when the current independent accounting firm was engaged and whether, in the 18 months preceding the engagement, there were any disagreements with the former principal accounting firm in a matter of accounting principles or practices, financial statement disclosure, or accounting procedure which, if not resolved to the satisfaction of the former accounting firm, would have required a reference, in the accounting firm's opinion, to the subject matter of the disagreement.

(b) The continuing care community shall request the former accounting firm to furnish the continuing care community with a letter stating whether it agrees with the statement of the continuing care community under subdivision (a) and, if not, stating why it does not agree. The letter shall be furnished by the continuing care community to the department.

(4) If an entity owns multiple continuing care communities or if the organization has 1 or more affiliates, the department may require additional financial information for each continuing care community or affiliate but shall not require any audited financial statements other than the consolidated financial statements of the entity.

(5) Within 30 days after the end of the first half of its fiscal year, a continuing care community shall submit to the department an unaudited semiannual financial statement that includes at least all of the following:

(a) A balance sheet.

(b) An income statement.

(c) A statement of cash flows.

- (d) A statement of how entrance fee proceeds are used.
- (e) A management discussion explaining material fluctuations in the balance sheet and income statement, compared to the prior period or prior year-to-date.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.943 Financial forecast.

Sec. 43. A pro forma financial plan shall include a financial forecast for a period of 3 years, presented on the same accounting basis as the financial statements, including all of the following:

- (a) A balance sheet.
- (b) A statement of changes and activities or statement of operations.
- (c) A statement of cash flow.
- (d) Expected cash proceeds from sales of continuing care agreements based on projected occupancy and attrition rates.
- (e) Expected cash proceeds from monthly service fees, donations, interest, and entrance fees.
- (f) Amount of reserves expected to be provided for capital replacement, improvements, maintenance, refunds, and other expenses.
- (g) A statement of assumptions and principles used to make the forecast.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.945 Funds to be held in trust account; deposit with escrow agent; conditions; temporary suspension order; return of escrowed funds; escrow agreement and account; requirements; release of funds.

Sec. 45. (1) If a member pays funds to a continuing care community before occupancy, the funds shall be held in a trust account unless this requirement is waived or modified by the department. Any interest or other income from the investment of the funds held in the trust account shall accrue to the benefit of the member. The department may, by rule or order, determine the conditions of the trust account. Funds placed with a continuing care community for continuing care at home are not subject to the requirements of this subsection.

(2) The department may require a deposit with an escrow agent acceptable to the department of an amount the department considers necessary for the continuing care community to fulfill its obligations if both of the following apply:

- (a) The department finds 1 or more of the following:
 - (i) The financial condition of the continuing care community may materially jeopardize the care of members.
 - (ii) The continuing care community is insolvent or in jeopardy of becoming insolvent.
 - (iii) The continuing care community is not meeting its pro forma financial plan.
 - (b) The department determines the escrow to be necessary and appropriate to protect prospective members.
- (3) If subsection (2)(a) and (b) applies, the department may summarily order the temporary suspension of a continuing care community's approval to offer continuing care agreements pending a hearing under section 69(2).

(4) The department may direct the escrow agent to return all the funds escrowed under subsection (2) to the members if any of the following apply:

- (a) The department finds that any condition of an escrow agreement has not been satisfied or that any provision of this act or rules promulgated under this act has not been complied with.
 - (b) The registration or exemption of the continuing care community is revoked.
- (5) An escrow agreement required under this section shall comply with all of the following:

- (a) Be executed by the escrow agent and continuing care community.
- (b) State that its purpose is to protect the members, that the escrow is for the benefit of each member in the amount paid by each member, and that all funds subject to the escrow shall be deposited, held, or guaranteed under the arrangement to remain the property of the respective members for whose account the proceeds were deposited and not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the funds are released pursuant to this section.

(c) State that the department is authorized to inspect the records of the escrow agent relating to the escrow account.

(d) State that, upon order of the department or a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or a portion thereof, to the continuing care community or member as ordered.

(e) Include on its face an acknowledgment executed by the department indicating approval of the form and content of the escrow agreement. The acknowledgment does not make the department a party to the escrow agreement.

(f) Specify 1 of the following methodologies to be used to determine the amount of funds that may be released pursuant to a request under subsection (7):

(i) An amount up to 75% of the funds as a result of occupancy of at least 75% of living units in the continuing care community. The continuing care community may request release of an additional 5% of the funds in proportion to each 5-percentage-point increase in occupancy. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may authorize release of all the funds. For purposes of this subparagraph and subparagraph (ii), occupancy shall be measured by the total number of living units of the entire continuing care community designated for occupancy under continuing care agreements.

(ii) An amount equal to 1-1/2% per month of the total entrance fees escrowed, with amortization beginning as of the date of occupancy of a living unit by the member. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may approve release of all funds subject to the escrow arrangement.

(6) An escrow account under this section shall comply with all of the following:

(a) Checks shall be made payable to the depository approved by the department.

(b) The account shall be established with an escrow agent acceptable to the department and the funds shall be kept and maintained in an account separate and apart from any depository account of the continuing care community.

(c) All proceeds deposited in escrow remain the property of the respective members for whose account the proceeds were deposited and are not subject to a lien or charge by the escrow agent or to a judgment, garnishment, or creditor's claim against the continuing care community until the funds are released to the continuing care community as provided in this section.

(d) If required by the department, a quarterly statement indicating the status of the escrow account shall be furnished by the escrow agent to the department.

(7) A request for release of escrow funds under subsection (2) or for the discontinuance or modification of an escrow arrangement under subsection (2) shall be submitted by the administrator. The request shall include the following documentation, unless the documentation was previously provided in the most recent registration application or unless waived or modified, in whole or in part, by the department in the reasonable exercise of its discretion:

(a) The methodology under subsection (5)(f) for calculating the amount of funds to be released and supporting documentation.

(b) A statement by the continuing care community that the funds were placed in escrow as required by an order of the department imposing the escrow arrangement and pursuant to the terms and conditions of the escrow agreement.

(c) A statement by the continuing care community that it has satisfied all obligations for release of funds from escrow.

(d) If required by the department, a statement by the escrow agent, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds placed with the escrow agent.

(e) The name of each member and the amount held in escrow for the account of the member.

(f) A pro forma financial plan that complies with section 43.

(g) Documentation evidencing availability of adequate resources to fund the continuing care community's capital expenditures, debt service, refund of entrance fees, operating costs, continuing care community maintenance, and other costs and expenses projected for not less than 3 years.

(h) Audited financial statements for the continuing care community's most recent 4 fiscal years and financial statements for any portion of the current fiscal year ending within 120 days after the date of filing.

(i) Commitments for construction and permanent loan financing together with a copy of an adequate construction bond.

(j) Irrevocable lines or letters of credit, other irrevocable instruments of credit, confirmations of deposits of proceeds of sales of securities, leases, or evidences of any other valid commitments or income.

(k) Assumptions and the basis of schedules for attrition rates, occupancy rates, refund of entrance fees, debt service, operating expenses, and operating income.

(l) A commitment to notify the department promptly in writing of a material change in the information submitted under this subsection.

(8) The amount released shall be based on the methodology specified in the escrow agreement pursuant to subsection (5)(f), unless a switch to the alternative methodology specified in subsection (5)(f) is requested by the continuing care community and approved by the department.

(9) After submission of a request for release of funds pursuant to subsection (7), the department may approve release to the continuing care community of funds held in escrow pursuant to subsection (2). An

order issued by the department approving the release of funds held in escrow under subsection (2), in whole or in part, or for modification or discontinuance of an escrow arrangement imposed pursuant to subsection (2), shall include authorization for the escrow agent to release to the continuing care community those amounts of the escrowed funds applicable to a specified member as stated in the order.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.947 Alternative financial arrangement.

Sec. 47. (1) In lieu of an escrow arrangement imposed pursuant to section 45(2), the department may approve an alternative financial arrangement that separates or secures a designated amount of funds of the continuing care community for the benefit of members of the continuing care community or provides for the payment of funds on behalf of members through a surety bond, irrevocable letter of credit, trust account, guarantee, or other acceptable financing method or arrangement approved by the department. Documentation establishing an alternative financial arrangement shall be approved by the department and shall name the department as a party or third party beneficiary of the alternative financial arrangement to act on behalf of the members of the continuing care community.

(2) An alternative financial arrangement approved pursuant to this section shall comply with all of the following requirements:

(a) Be established pursuant to 1 or more written agreements approved by the department between the continuing care community and a reputable financial institution, escrow agent, surety, lender, guarantor, or other entity, which may include an affiliate of the continuing care community, authorized to transact business in this state.

(b) State that the purpose of the arrangement is to protect members of the continuing care community from the inability of the continuing care community to refund entrance fees when due.

(c) Be in an amount that is at least equal to the total entrance fees that would be collected for the continuing care community and that allows the continuing care community to fulfill its obligations to members consistent with the purpose for imposition of the arrangement.

(d) Require that all proceeds deposited, held, or guaranteed under the arrangement remain the property of the respective members for whose account the proceeds were deposited and are not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the proceeds are released pursuant to this section.

(e) Provide that, upon order of the department or a court of competent jurisdiction, the appropriate amount of funds described in this section shall be released and paid to the continuing care community or member as ordered.

(f) Require that quarterly balance statements be provided to the department directly from the escrow agent, financial institution, or other entity with custody of the funds and authorize the department to inspect the records pertinent to the arrangement.

(g) Comply with such other terms or conditions imposed by the department by rule or order.

(3) The department shall take into consideration the amount of the entrance fees and other fees to be charged in addition to the number of continuing care agreements to be offered, granted, or sold in determining the initial amount of the alternative financial arrangement and shall amend the amount of the alternative financial arrangement, as the public interest requires, using the same factors.

(4) If a continuing care community fails to complete its obligations under a continuing care agreement, the financial institution that is a party to the alternative financial arrangement with the continuing care community shall, upon order of the department, pay funds to the department or its designee for the benefit of all members.

(5) If an instrument comprising an alternative financial arrangement expires or is canceled and the continuing care community is still under an obligation to provide certain items under the continuing care agreement, the continuing care community, at its option, may either establish a new alternative financial arrangement under subsection (1) or have the department impose under section 45(2) an escrow of entrance and other fees. Until an alternative financial arrangement acceptable to the department is established or escrow is imposed, the continuing care community shall not enter into any additional continuing care agreements. An alternative financial arrangement approved under this section may be released in whole or in part by order of the department, subject to the requirements for release of escrow funds pursuant to section 45.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.949 Records; reports.

Sec. 49. (1) A registered continuing care community shall prepare and maintain for not less than 6 years all of the following records:

(a) Accounts and records of each day's sales of memberships in the continuing care community, receipts of

cash, and other debits and credits.

(b) Copies of contracts, including continuing care agreements and terminated continuing care agreements, management contracts for any material component of operations, contracts for construction of buildings or other structures used to provide continuing care, and contracts with affiliated persons related to any material component of operations.

(c) Records of compensation paid to persons, directly or indirectly, in connection with the offer or sale of continuing care agreements. These records shall include all the following information:

(i) The persons to whom payments are made.

(ii) The date and amount of each payment.

(iii) The reason for each payment.

(iv) The transaction from which each payment arose.

(d) Member records of all of the following:

(i) Each member's name, address, and age.

(ii) The total amount paid to date by each member and the dates on which the payments were made.

(iii) The aggregate amount to be paid by each member.

(iv) The terms of payment.

(e) Complaint records of all of the following:

(i) Each written complaint by a member alleging violations of this act or rules promulgated under this act.

(ii) The date of the complaint.

(iii) Any action taken by the continuing care community in response to the complaint.

(2) Not more than 30 days after the end of each fiscal year quarter, or such later date as may be authorized by the department, a registered continuing care community shall submit the following to the department, unless waived by the department:

(a) A quarterly sales report setting forth the continuing care community's sales executed by new members and the proceeds derived from the collection of entrance fees from such members.

(b) A quarterly occupancy report stating the percentage of occupancy of living units in a continuing care community, the number of occupants who have continuing care agreements, and the number of members who have died or moved out of the continuing care community since the last occupancy report was submitted.

(3) If required by the department in the reasonable exercise of its discretion, a registered continuing care community shall submit to the department a report that compares any increases in monthly service fees to the annual consumer price index - all urban consumers, over 5 preceding calendar years. This report shall be submitted no later than February 1 following the end of each 5-year period. The first 5-year period begins January 1 after the effective date of this act.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.951 Advertising or marketing communication.

Sec. 51. (1) A person shall not distribute or transmit an advertisement or marketing communication described in this subsection unless a true copy of the advertisement or marketing communication has been submitted to and approved by the department or unless an advertising waiver has been approved by the department. This subsection applies only to an advertising or marketing communication that contains any of the following information:

(a) An entrance fee.

(b) A monthly service fee.

(c) A disclosure statement.

(d) A continuing care agreement.

(2) The department shall approve or reject in writing any advertisement or marketing communication submitted under subsection (1) within 10 days after the date it is received.

(3) To obtain an advertising waiver, a continuing care community shall submit to the department a written request that includes the reasons why the waiver should be approved. The department shall grant or deny a waiver request in writing within 30 days after receipt. If the waiver is granted, the waiver shall specify its expiration date, if any.

(4) This act does not impose liability, civil or criminal, upon a person regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station, and acting solely in the person's official capacity, who publishes an advertisement or marketing communication in good faith and without knowledge that the advertisement or marketing communication constitutes a violation of this act.

(5) A continuing care community shall maintain advertising or marketing communications for not less than 3 years in physical copy or electronic format and make these records available to the department upon written request.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.955 Offer or sale of continuing care agreement; prohibited acts.

Sec. 55. (1) A person shall not, in connection with the offer or sale of a continuing care agreement, directly or indirectly do any of the following:

(a) Employ a device, scheme, or artifice to defraud.

(b) Engage in an act, practice, or course of business which operates or would operate as a fraud or deceit.

(c) Make an untrue statement of a material fact or fail to state a material fact necessary in order to make the statements made not misleading, in the light of the circumstances under which they are made, including an untrue statement of a material fact or failure to state a material fact in any application, notice, or report filed with the department under this act.

(d) Fail to notify the department of a reportable change as required by section 33.

(e) Publish any advertisement or marketing communication that contains false, fraudulent, misleading, or deceptive information. This subdivision does not apply to a person that publishes an advertisement or marketing communication on behalf of a continuing care community and is not affiliated with the continuing care community.

(2) Each of the following practices constitutes a false, fraudulent, misleading, or deceptive advertising or marketing communication for purposes of subsection (1)(e):

(a) A statement or inference that the purchase of a membership in a continuing care community is a safe investment.

(b) A statement or inference that a continuing care community is affiliated with a religious, nonprofit, or proprietary organization if it is not so affiliated.

(c) A material misrepresentation of services, care, or amenities, provided or to be provided by a continuing care community.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.957 Appointment of independent conservator or guardian.

Sec. 57. If a member becomes mentally or physically incapacitated and is unable to handle his or her own personal or financial affairs, the continuing care community may petition a court of competent jurisdiction to appoint an independent conservator or guardian. If the court approves the petition as well as the costs associated with the petition, the continuing care community may charge these costs to the member.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.959 Arbitration.

Sec. 59. (1) A dispute, claim, or grievance arising between a member or a member's estate and a continuing care community shall upon written consent of the parties be submitted to arbitration. The arbitrator's decision is final and binding. The arbitration is subject to the rules of the American arbitration association in effect at the time of the dispute, claim, or grievance.

(2) A condition, stipulation, or provision purporting to bind a member to waive compliance with any provision of this act or a rule promulgated or order issued under this act is void.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.961 Service of process; irrevocable consent appointing department.

Sec. 61. (1) An applicant for registration under this act, other than a domestic corporation, shall file with the department, on a form prescribed by the department, an irrevocable consent appointing the department to be its attorney to receive service of lawful process in a noncriminal action or proceeding against it or its successor, executor, or administrator that arises under this act or a rule promulgated or order issued under this act after the consent has been filed. After the filing of the consent, process received by the department has the same force and validity as if served personally on the person filing consent.

(2) Service under subsection (1) may be made by leaving a copy of the process in the office of the department but it is not effective unless all of the following requirements are met:

(a) The plaintiff, who may be the department in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last address on file with the department.

(b) The plaintiff's affidavit of compliance with subdivision (a) is filed in the action, on or before the return day of the process, if any, or within such further time as the court may allow.

(3) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule promulgated or order issued under this act, whether or not a consent to service of process has been filed and personal jurisdiction can otherwise be obtained in this state, that conduct shall be

considered equivalent to the appointment of the department to be the attorney to receive service of a lawful process in a civil action or proceeding against the person or a successor, executor, or administrator arising out of that conduct and which is brought under this act or a rule promulgated or order issued under this act, with the same force and validity as if served on the person personally.

(4) Service under subsection (3) may be made by leaving a copy of the process in the office of the department, but it is not effective unless all of the following requirements are met:

(a) The plaintiff, which may be the department in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last known address or takes other steps that are reasonably calculated to give actual notice.

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.963 Investigations.

Sec. 63. (1) The department may conduct investigations within or outside this state to determine if any of the following apply:

(a) An offering of a continuing care agreement under this act poses or may pose an unreasonable risk as described in subsection (3).

(b) A person has violated or is about to violate this act or a rule promulgated or order issued under this act.

(2) The department may require or permit a person to file a written statement under oath or otherwise as to all the facts and circumstances concerning the matter to be investigated under subsection (1). If the person fails to reply with all required information to a written request from the department within 15 days after receipt of the letter, the department may issue a cease and desist order.

(3) The department may determine that an offering creates an unreasonable risk to members under this act if any of the following apply:

(a) Monthly service fees or assessments are not used for the purpose designated.

(b) With respect to an offering by a continuing care community seeking registration or exemption, the offering fails to provide for adequate reserves or other adequate revenue sources for operations, repairs, and renovations. The department may utilize an industry representative or accounting representative to determine the adequacy of revenue sources.

(c) With respect to a continuing care community making an offering, the continuing care community has been in operation less than 1 year or is in the development stage at the time of registration and has failed to achieve reservations for 75% of the living units at the date of first occupancy, unless the department finds that the financial condition of the continuing care community or the escrow arrangements established in connection with the offering are such as to outweigh any special risk.

(4) For the purpose of an investigation or proceeding under this act, the department may administer oaths and affirmations and receive evidence. To subpoena witnesses or require the production of books, papers, or other documents or records, the department must obtain an order of the circuit court by a showing that there is good cause to believe that a violation has taken place or is about to take place. However, in a contested case, the department itself may issue subpoenas and is subject to section 73 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.965 Review and audit of documents and records.

Sec. 65. (1) The department shall review all documents submitted to the department under this act for compliance with this act. The department may require the submission of supplemental documents if the department considers the additional information necessary for the purposes of this act.

(2) The records of a continuing care community are subject to reasonable audit by a representative of the department, inside or outside of this state, that the department considers necessary or appropriate in the public interest and for the protection of members or prospective members. The department may copy records the department reasonably considers necessary to conduct the audit.

(3) A routine audit shall be conducted during normal business hours and with reasonable advance notice. An audit in response to a complaint or other special audit may be conducted at any time and without advance notice.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.967 Repayment of entrance fee; temporary suspension.

Sec. 67. (1) A court or the department may by order authorize a registrant to suspend repayment of an

entrance fee for not more than 180 days, upon a showing by the registrant that payment would jeopardize the care of members in the continuing care community. The order may be extended upon a showing of substantial progress in resolving the financial difficulties of the continuing care community.

(2) To obtain an order from the department allowing the temporary suspension of repayment of an entrance fee pursuant to subsection (1), a continuing care community shall submit to the department a letter requesting a temporary suspension order. The letter shall contain all of the following information:

- (a) The name of the facility involved and its affiliates, if any.
 - (b) The particular facts relied upon as a basis for the suspension request.
 - (c) The time during which the facility desires the suspension to be effective.
 - (d) Financial statements dated not more than 45 days before the date of the request.
 - (e) Other information required by the department.
- (3) The department may hold a public hearing to determine whether the suspension should be granted.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.969 Order denying, suspending, or revoking registration.

Sec. 69. (1) The department may issue an order denying, suspending, or revoking a registration if it finds that the order is in the public interest and finds 1 or more of the following:

(a) The application for registration or the registration statement in effect is not complete in a material respect or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact.

(b) The registrant or applicant, or its agent or employee, has violated this act or a rule promulgated or order issued under this act.

(c) The offer and sale of a continuing care agreement is not fair, just, and equitable or has worked or tended to work a fraud or imposition or would so operate, or the terms of the offering would create an unreasonable risk to members as defined by rules.

(d) The registrant's or applicant's method of business includes or would include activities that are illegal where performed.

(e) A person identified in the application is described in section 19(1)(f)(i) or (ii) as a result of an act or omission involving the illegal offering of a continuing care agreement, franchise, or security and the department determines that the involvement of the person in the sale of leases or management of the continuing care community creates an unreasonable risk to members.

(f) The registrant or applicant is the subject of a permanent or temporary injunction entered under a federal or state act, and the injunction is applicable to the offer and sale of a continuing care agreement.

(g) The registrant or applicant has failed to pay the proper fee required by, or fine imposed under, this act.

(h) The registrant has failed to submit an application for renewal of a registration as required under section 25.

(2) Before issuing an order under subsection (1) or section 45(3), the department shall notify the registrant or applicant by registered or certified mail. The notice shall include the proposed order, the reasons for the proposed order, and a statement that, if a hearing is requested in writing within 15 days after issuance of the notice of intent, a hearing will be conducted on the matter within 45 days after the receipt of the request, unless the registrant or applicant consents to a later date. If a hearing is not timely requested by the continuing care community and is not ordered by the department, the department shall issue an order under subsection (1). The order shall remain in effect until it is modified or vacated by the department. If a hearing is timely requested or ordered, the department, after notice and an evidentiary hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter an order under subsection (1), or find that a violation or other condition under which entry of an order is authorized has not occurred.

(3) The department may vacate or modify an order under this section if it finds that the conditions on which it was based have changed or that it is otherwise in the public interest to do so.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.971 Cease and desist order.

Sec. 71. (1) Subject to subsection (2), if the department determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule promulgated or order issued under this act, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting such a violation, the department may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary to comply with this act.

(2) Before issuing an order under subsection (1), the department shall notify the person. The notice shall

include the proposed order, the reasons for the proposed order, and a statement that, if a hearing is requested in writing within 15 days after issuance of the notice of intent, a hearing will be conducted on the matter within 45 days after receipt of the request, unless the person consents to a later date. If a hearing is not timely requested, the department shall issue an order under subsection (1). If a hearing is timely requested, the department, after notice and an evidentiary hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter a cease and desist order or find that a violation has not occurred.

(3) A person that knowingly authorizes, directs, or aids in violation of a final cease and desist order, or who knowingly fails to comply with the terms of a final cease and desist order, may be fined not more than \$10,000.00.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.973 Injunction, restraining order, or writ of mandamus.

Sec. 73. If it appears to the department that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the attorney general may bring an action in the name of the people in the circuit court to enjoin the acts or practices or to enforce compliance with this act or the rule or order. Upon a proper showing, a preliminary or permanent injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the department to post a bond.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.975 Civil fine; costs; sanctions; continuing care agreement as voidable; refund.

Sec. 75. (1) If the director of the department finds that a person violated this act or a rule promulgated or order issued under this act, after an opportunity for an evidentiary hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may order the person to pay a civil fine of not less than \$1,000.00 or more than \$50,000.00. The director may also order the respondent to pay the costs of the investigation.

(2) After providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may impose any of the following sanctions on a person that violates this act or a rule promulgated or order issued under this act:

(a) If the person is registered under this act, an administrative fine of not more than \$10,000.00 for each violation.

(b) A requirement that restitution be made. The registration of the person required to make the restitution may be suspended until the restitution is made.

(3) If a continuing care agreement does not comply with the requirements of this act, the continuing care agreement is voidable. If the agreement is voided, the continuing care community shall refund to the member the amount that the member paid when the continuing care agreement was entered into.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.977 Liability; offer of rescission.

Sec. 77. (1) A person that offers or sells a continuing care agreement in violation of section 15 or 55 or an order issued under section 69 is liable to the person executing the continuing care agreement for all of the following:

(a) Damages.

(b) Repayment of all fees paid to the continuing care community or entity purporting to operate as a continuing care community under this act less, in the case of a continuing care community, the reasonable cost of continuing care provided by the continuing care community until discovery or until the violation should reasonably have been discovered.

(c) 6% interest on the amounts under subdivisions (a) and (b).

(d) Reasonable attorney fees.

(e) Court costs.

(2) A person may not file or maintain an action under this section if, before filing the action, the person received an offer of rescission approved by the department to refund the entrance fee together with interest at 6% per year from the date of purchase less the reasonable cost of continuing care provided until discovery, and the member failed to accept the offer within 30 days after its receipt. When a continuing care community makes written offer of rescission, the continuing care community shall file a copy with the department. The rescission offer shall recite the provisions of this section.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.979 Liability by implication; liability under other statute or common law.

Sec. 79. Except as explicitly provided in this act, civil liability in favor of a private party does not arise against a person by implication from or as a result of the violation of this act or a rule promulgated or order issued under this act. This act does not limit liability that may exist under any other statute or under common law.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.981 Person materially aiding in act or transaction constituting violation; joint and several liability.

Sec. 81. A person that directly controls a person that violates this act, a partner in a firm that violates this act, a principal executive officer or paid director or trustee of a corporation that violates this act, a person occupying a similar status as an executive officer or director performing similar functions, or an employee of a person that violates this act who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the person that violates this act, unless the person did not have knowledge of or reasonable grounds to believe in the existence of the facts constituting the violation.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.983 Statute of limitations.

Sec. 83. An action shall not be maintained to enforce a liability created under this act unless brought before the expiration of 3 years after the date of the act or transaction constituting the violation.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.985 Violation as felony; penalty; seizure and forfeiture of proceeds or instrumentality of crime.

Sec. 85. (1) A person that knowingly violates this act is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$10,000.00, or both.

(2) The proceeds, the substituted proceeds, or an instrumentality of a crime described in subsection (1) are subject to seizure and forfeiture in the manner provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.987 Promulgation of rules.

Sec. 87. Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may promulgate rules to implement this act.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.989 Disclosure of filings; exemption; confidentiality of social security numbers.

Sec. 89. (1) Applications, reports, and other papers and documents filed by applicants or registrants or experts or appraisers with the department under this act are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. However, pro forma financial statements, marketing plans, feasibility studies, and social security numbers are exempt from disclosure. In addition, a continuing care community may request, and the department may grant, subject to section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, confidentiality as to any other document received under this act.

(2) Subject to subsection (1) the department or its examiners, investigators, assistants, clerks, or deputies shall not disclose information filed with or obtained by them under this act except among themselves or when necessary or appropriate in a proceeding or investigation under this act or to other federal or state regulatory agencies. However, to aid in the enforcement of this act or in the prescribing of rules and forms under this act, the department may publish information concerning a violation of this act or a rule promulgated or order issued under this act.

(3) The department shall take reasonable steps to protect the confidentiality of social security numbers provided to the department under this act.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.991 Life interest or long-term lease agreement under former act.

Sec. 91. A life interest or long-term lease agreement entered into under the former 1976 PA 440 is not invalidated by the repeal of that act and the adoption of this act.

History: 2014, Act 448, Eff. Apr. 2, 2015.

554.993 Facility or person registered or exempt under former act.

Sec. 93. A facility or person that was registered or exempt from registration under the former living care disclosure act, 1976 PA 440, immediately before the effective date of this act shall be considered to be registered or exempt from registration, respectively, under this act until the registration or exemption would have expired under the former living care disclosure act, 1976 PA 440, or 30 days after the effective date of this act, whichever is later.

History: 2014, Act 448, Eff. Apr. 2, 2015.

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT
Act 16 of 2018

AN ACT to enact the uniform commercial real estate receivership act; to provide for the appointment of receivers to take possession of commercial real property of another and to receive, collect, care for, and dispose of the property or proceeds of the property; and to provide remedies related to the receiverships.

History: 2018, Act 16, Eff. May 7, 2018.

The People of the State of Michigan enact:

554.1011 Short title.

Sec. 1. This act shall be known and may be cited as the "uniform commercial real estate receivership act".

History: 2018, Act 16, Eff. May 7, 2018.

554.1012 Definitions.

Sec. 2. As used in this act:

(a) "Affiliate" means all of the following:

(i) With respect to an individual, any of the following:

(A) A companion of the individual.

(B) A lineal ancestor or descendant, whether by blood or adoption, of either of the following:

(I) The individual.

(II) A companion of the individual.

(C) A companion of an ancestor or descendant described in sub-subparagraph (B).

(D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them.

(E) Any other individual occupying the residence of the individual.

(ii) With respect to a person other than an individual, any of the following:

(A) Another person that directly or indirectly controls, is controlled by, or is under common control with the person.

(B) An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person.

(C) A companion of, or an individual occupying the residence of, an individual described in sub-subparagraph (A) or (B).

(b) "Companion" means any of the following:

(i) The spouse of an individual.

(ii) The domestic partner of an individual.

(iii) Another individual in a civil union with an individual.

(c) "Court" means the circuit court.

(d) "Executory contract" means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.

(e) "Governmental unit" means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

(f) "Lien" means an interest in property that secures payment or performance of an obligation.

(g) "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.

(h) "Mortgagee" means a person entitled to enforce an obligation secured by a mortgage.

(i) "Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

(j) "Owner" means the person for whose property a receiver is appointed.

(k) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(l) "Proceeds" means any of the following property:

(i) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property.

(ii) Whatever is collected on, or distributed on account of, receivership property.

(iii) Rights arising out of receivership property.

(iv) To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property.

(v) To the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage

to the property.

(m) "Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

(n) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this act or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

(o) "Receivership" means a proceeding in which a receiver is appointed.

(p) "Receivership property" means the property of an owner that is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

(q) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(r) "Rents" means all of the following:

(i) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person.

(ii) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property.

(iii) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person.

(iv) Sums payable to terminate an agreement to possess or occupy real property of another person.

(v) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property.

(vi) Other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this act.

(s) "Secured obligation" means an obligation the payment or performance of which is secured by a security agreement.

(t) "Security agreement" means an agreement that creates or provides for a lien.

(u) "Sign" means to do any of the following with present intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic sound, symbol, or process.

(v) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

History: 2018, Act 16, Eff. May 7, 2018.

554.1013 Court order; issuance; notice and hearing; circumstances.

Sec. 3. (1) Except as otherwise provided in subsection (2), the court may issue an order under this act only after notice and opportunity for a hearing appropriate in the circumstances.

(2) The court may issue an order under this act under the following circumstances:

(a) Without prior notice if the circumstances require issuance of an order before notice is given.

(b) After notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held.

(c) After notice and without a hearing if no interested party timely requests a hearing.

History: 2018, Act 16, Eff. May 7, 2018.

554.1014 Applicability of act; scope; limitation.

Sec. 4. (1) Except as otherwise provided in subsection (2) or (3), this act applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(2) This act does not apply to a receivership for an interest in real property improved by 1 to 4 dwelling units unless 1 or more of the following applies:

(a) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence.

(b) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes.

(c) The owner planned or is planning to develop the property into 1 or more dwelling units to be sold or leased in the ordinary course of the owner's business.

(d) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(3) This act does not apply to a receivership authorized by law of this state other than this act in which the

receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by the other law.

(4) This act does not limit the authority of a court to appoint a receiver under law of this state other than this act.

(5) Unless displaced by a particular provision of this act, the principles of law and equity supplement this act.

History: 2018, Act 16, Eff. May 7, 2018.

554.1015 Selection, appointment, removal, and compensation of receiver; establishment by supreme court rule; jurisdiction.

Sec. 5. (1) The procedure for the selection, appointment, removal, and compensation of a receiver under this act is as established by rule of the supreme court.

(2) The court that appoints a receiver under this act has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

History: 2018, Act 16, Eff. May 7, 2018.

554.1016 Appointment of receiver; circumstances; appointment without prior notice or hearing; security.

Sec. 6. (1) The court may appoint a receiver as follows:

(a) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, under either of the following circumstances:

(i) The property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment.

(ii) The property or its revenue-producing potential has been or is about to be the subject of a voidable transaction.

(b) After judgment for any of the following reasons:

(i) To carry the judgment into effect.

(ii) To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment.

(c) In an action in which a receiver for real property may be appointed on equitable grounds.

(d) During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to the rents.

(2) In connection with the foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property under any of the following circumstances:

(a) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.

(b) The mortgagor agreed in a signed record to appointment of a receiver on default.

(c) The owner agreed, after default and in a signed record, to appointment of a receiver.

(d) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation.

(e) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect.

(f) The holder of a subordinate lien obtains appointment of a receiver for the property.

(3) The court may condition appointment of a receiver without prior notice under section 3(2)(a) or without a prior hearing under section 3(2)(b) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

History: 2018, Act 16, Eff. May 7, 2018.

554.1017 Appointment of receiver; disqualification; statement.

Sec. 7. (1) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(2) Except as otherwise provided in subsection (3), a person is disqualified from appointment as receiver if 1 or more of the following apply:

(a) The person is an affiliate of a party.

(b) The person has an interest materially adverse to an interest of a party.

(c) The person has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver.

(d) The person has a debtor-creditor relationship with a party.

(e) The person holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

(3) A person is not disqualified from appointment as receiver solely because 1 or more of the following apply:

(a) The person was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership.

(b) The person is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes.

(c) The person maintains with a party a deposit account as defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

(4) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

History: 2018, Act 16, Eff. May 7, 2018.

554.1018 Bond; alternative security.

Sec. 8. (1) Except as otherwise provided in subsection (2), a receiver shall post with the court a bond that meets all of the following requirements:

(a) The bond is conditioned on the faithful discharge of the receiver's duties.

(b) The bond has 1 or more sureties approved by the court.

(c) The bond is in an amount the court specifies.

(d) The bond is effective as of the date of the receiver's appointment.

(2) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(3) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

(4) A claim against a receiver's bond or alternative security must be made not later than 1 year after the date the receiver is discharged.

History: 2018, Act 16, Eff. May 7, 2018.

554.1019 Status of receiver as lien creditor.

Sec. 9. On appointment of a receiver, the receiver has the status of a lien creditor under both of the following:

(a) Article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9809, as to receivership property that is personal property or fixtures.

(b) The recording statutes of this state as to receivership property that is real property.

History: 2018, Act 16, Eff. May 7, 2018.

554.1020 Acquisition of property after appointment as receiver; security agreement.

Sec. 10. Except as otherwise provided by law of this state other than this act, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

History: 2018, Act 16, Eff. May 7, 2018.

554.1021 Receivership property; duties of person upon demand of receiver; failure to turn over property; sanction.

Sec. 11. (1) Unless the court orders otherwise, a person shall do both of the following on demand by a receiver, as applicable:

(a) If the person owes a debt that is receivership property and is matured or payable on demand or on order, pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment.

(b) Subject to subsection (3), if the person has possession, custody, or control of receivership property, turn the property over to the receiver.

(2) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(3) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's

lien.

(4) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

History: 2018, Act 16, Eff. May 7, 2018.

554.1022 Powers and duties of receiver.

Sec. 12. (1) Except as limited by court order or law of this state other than this act, a receiver may do all of the following:

- (a) Collect, control, manage, conserve, and protect receivership property.
- (b) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business.
- (c) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property.
- (d) Assert a right, claim, cause of action, or defense of the owner that relates to receivership property.
- (e) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties.
- (f) On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership.
- (g) Engage a professional as provided in section 15.
- (h) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state.
 - (1) Exercise any power conferred by court order, this act, or law of this state other than this act.
 - (2) With court approval, a receiver may do any of the following:
 - (a) Incur debt for the use or benefit of receivership property other than in the ordinary course of business.
 - (b) Make improvements to receivership property.
 - (c) Use or transfer receivership property other than in the ordinary course of business as provided in section 16.
 - (d) Adopt or reject an executory contract of the owner as provided in section 17.
 - (e) Pay compensation to the receiver as provided in section 21, and to each professional engaged by the receiver as provided in section 15.
 - (f) Recommend allowance or disallowance of a claim of a creditor as provided in section 20.
 - (g) Make a distribution of receivership property as provided in section 20.
 - (3) A receiver shall do all of the following:
 - (a) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property.
 - (b) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property.
 - (c) File with the appropriate real property recording office a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description.
 - (d) Disclose to the court any fact arising during the receivership that would disqualify the receiver under section 7.
 - (e) Perform any duty imposed by court order, this act, or law of this state other than this act.
- (4) The powers and duties of a receiver may be expanded, modified, or limited by court order.

History: 2018, Act 16, Eff. May 7, 2018.

554.1023 Duties of owner.

Sec. 13. (1) An owner shall do all of the following:

- (a) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties.
- (b) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.
- (c) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control.
- (d) On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property,

liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership.

(e) Perform any duty imposed by court order, this act, or law of this state other than this act.

(2) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

(3) If a person knowingly fails to perform a duty imposed by this section, the court may do 1 or both of the following:

(a) Award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs.

(b) Sanction the failure as civil contempt.

History: 2018, Act 16, Eff. May 7, 2018.

554.1024 Stay or injunction.

Sec. 14. (1) Except as otherwise provided in subsection (4) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding to do any of the following:

(a) Obtain possession of, exercise control over, or enforce a judgment against receivership property.

(b) Enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order.

(2) Except as otherwise provided in subsection (4), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

(3) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

(4) An order under subsection (1) or (2) does not operate as a stay or injunction of any of the following:

(a) An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver.

(b) An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property.

(c) Commencement or continuation of a criminal proceeding.

(d) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power.

(e) Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

(5) The court may void an act that violates a stay or injunction under this section.

(6) If a person knowingly violates a stay or injunction under this section, the court may do 1 or both of the following:

(a) Award actual damages caused by the violation, reasonable attorney fees, and costs.

(b) Sanction the violation as civil contempt.

History: 2018, Act 16, Eff. May 7, 2018.

554.1025 Engagement of professional; compensation.

Sec. 15. (1) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose all of the following to the court:

(a) The identity and qualifications of the professional.

(b) The scope and nature of the proposed engagement.

(c) Any potential conflict of interest.

(d) The proposed compensation.

(2) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. This act does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(3) A receiver or professional engaged under subsection (1) shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

History: 2018, Act 16, Eff. May 7, 2018.

554.1026 "Good faith" defined; use or transfer of receivership property not in ordinary course of business.

Sec. 16. (1) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(2) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(3) With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption but is subject to a senior lien.

(4) A lien on receivership property that is extinguished by a transfer under subsection (3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(5) A transfer under subsection (3) may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(6) A reversal or modification of an order approving a transfer under subsection (3) does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

History: 2018, Act 16, Eff. May 7, 2018.

554.1027 "Timeshare interest" defined; executory contract.

Sec. 17. (1) As used in this section, "timeshare interest" means either of the following, as applicable:

(a) Unless subdivision (b) applies, an interest having a duration of more than 3 years that grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(b) If the condominium act, 1978 PA 59, MCL 559.101 to 559.276, applies, a time-share estate or a time-share license, as those terms are defined in section 10 of the condominium act, 1978 PA 59, MCL 559.110.

(2) Except as otherwise provided in subsection (8), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

(3) A receiver's performance of an executory contract before court approval under subsection (2) of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

(4) A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (2) to adopt the contract.

(5) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (2). Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of the following:

(a) The time set for submitting a claim in the receivership.

(b) Thirty days after the court approves the rejection.

(6) If, at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this act, the receiver may assign the contract with court approval.

(7) If a receiver rejects under subsection (2) an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may do either of the following:

(a) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid.

(b) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall

continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(8) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if 1 or more of the following apply:

(a) The tenant occupies the leased premises as the tenant's primary residence.

(b) The receiver was appointed at the request of a person other than a mortgagee.

(c) The receiver was appointed at the request of a mortgagee and 1 or more of the following apply:

(i) The lease is superior to the lien of the mortgage.

(ii) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease.

(iii) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage.

(iv) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

History: 2018, Act 16, Eff. May 7, 2018.

554.1028 Defenses and immunities of receiver.

Sec. 18. (1) A receiver is entitled to all defenses and immunities provided by law of this state other than this act for an act or omission within the scope of the receiver's appointment.

(2) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

History: 2018, Act 16, Eff. May 7, 2018.

554.1029 Interim report of receiver.

Sec. 19. A receiver may file or, if ordered by the court, shall file an interim report that includes all of the following:

(a) The activities of the receiver since appointment or a previous report.

(b) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.

(c) Receipts and dispositions of receivership property.

(d) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.

(e) Any other information required by the court.

History: 2018, Act 16, Eff. May 7, 2018.

554.1030 Notice of appointment; claim; distribution of receivership property.

Sec. 20. (1) Except as otherwise provided in subsection (6), a receiver shall give notice of appointment of the receiver to creditors of the owner by both of the following:

(a) Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last known address of each creditor.

(b) Publication as directed by the court.

(2) Except as otherwise provided in subsection (6), the notice required by subsection (1) must specify the date by which each creditor holding a claim against the owner that arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least 90 days after the later of notice under subsection (1)(a) or last publication under subsection (1)(b). The court may extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(3) A claim submitted by a creditor under this section must satisfy all of the following requirements:

(a) The claim must state the name and address of the creditor.

(b) The claim must state the amount and basis of the claim.

(c) The claim must identify any property securing the claim.

(d) The claim must be signed by the creditor under penalty of perjury.

(e) The claim must include a copy of any record on which the claim is based.

(4) An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

(5) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow

the claim according to law of this state other than this act.

(6) If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order both of the following:

(a) That the receiver need not give notice under subsection (1) of the appointment to all creditors of the owner, but only such creditors as the court directs.

(b) That unsecured creditors need not submit claims under this section.

(7) Subject to section 21, both of the following apply to a distribution of receivership property:

(a) If the distribution is to a creditor holding a perfected lien on the property, the distribution must be made in accordance with the creditor's priority under law of this state other than this act.

(b) If the distribution is to a creditor with an allowed unsecured claim, the distribution must be made as the court directs according to law of this state other than this act.

History: 2018, Act 16, Eff. May 7, 2018.

554.1031 Fees and expenses.

Sec. 21. (1) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(2) The court may order 1 or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs:

(a) A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses.

(b) A person whose conduct justified or would have justified the appointment of the receiver under section 6(1)(a).

History: 2018, Act 16, Eff. May 7, 2018.

554.1032 Removal of receiver; replacement; discharge; termination.

Sec. 22. (1) The court may remove a receiver for cause.

(2) The court shall replace a receiver that dies, resigns, or is removed.

(3) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

(4) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess both of the following against the person that sought the appointment:

(a) The fees and expenses of the receivership, including reasonable attorney fees and costs.

(b) Actual damages caused by the appointment, including reasonable attorney fees and costs.

History: 2018, Act 16, Eff. May 7, 2018.

554.1033 Final report of receiver; contents; discharge.

Sec. 23. (1) On completion of a receiver's duties, the receiver shall file a final report including all of the following:

(a) A description of the activities of the receiver in the conduct of the receivership.

(b) A list of receivership property at the commencement of the receivership and any receivership property received during the receivership.

(c) A list of disbursements, including payments to professionals engaged by the receiver.

(d) A list of dispositions of receivership property.

(e) A list of distributions made or proposed to be made from the receivership for creditor claims.

(f) If not filed separately, a request for approval of the payment of fees and expenses of the receiver.

(g) Any other information required by the court.

(2) If the court approves a final report filed under subsection (1) and the receiver distributes all receivership property, the receiver is discharged.

History: 2018, Act 16, Eff. May 7, 2018.

554.1034 Receivership in another state; rights, powers, and duties of ancillary receiver.

Sec. 24. (1) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this act, if both of the following apply:

- (a) The person or nominee would be eligible to serve as receiver under section 7.
- (b) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.
- (2) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.
- (3) Unless the court orders otherwise, an ancillary receiver appointed under subsection (1) has the rights, powers, and duties of a receiver appointed under this act.

History: 2018, Act 16, Eff. May 7, 2018.

554.1035 Enforcement by mortgagee; effect.

Sec. 25. A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not do any of the following:

- (a) Make the mortgagee a mortgagee in possession of the real property.
- (b) Make the mortgagee an agent of the owner.
- (c) Constitute an election of remedies that precludes a later action to enforce the secured obligation.
- (d) Make the secured obligation unenforceable.
- (e) Limit any right available to the mortgagee with respect to the secured obligation.
- (f) Constitute an action within the meaning of section 3204(1)(b) of the revised judicature act of 1961, 1961 PA 236, MCL 600.3204.

History: 2018, Act 16, Eff. May 7, 2018.

554.1036 Uniformity of law.

Sec. 26. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2018, Act 16, Eff. May 7, 2018.

554.1037 Electronic signatures in global and national commerce act.

Sec. 27. This act modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(c) or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

History: 2018, Act 16, Eff. May 7, 2018.

554.1038 Receiver appointed before effective date of act.

Sec. 28. This act does not apply to a receivership for which the receiver was appointed before the effective date of this act.

History: 2018, Act 16, Eff. May 7, 2018.

554.1040 Effective date.

Sec. 30. This act takes effect 90 days after the date it is enacted into law.

History: 2018, Act 16, Eff. May 7, 2018.