

# Residential Land Contracts for Buyers and Sellers

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## **I. Issues and Questions**

- Why a Land Contract?
- What is the significance of retaining legal title?
- How has/does usury impact the decision to use a Land Contract?
- Will a Land Contract help the vendor recover from an “underwater” property?

- What are the concerns of the Land Contract vendor?
- What are the concerns of the Land Contract vendee?
- Can real estate which is subject to a mortgage be sold on land contract? How does this impact due on sale provisions in the mortgage? How can a buyer protect herself in such a situation?
- Is a separate Purchase Agreement necessary or is it redundant?
- What happens to real estate taxes at the time of closing on the Land Contract? What about when the Land Contract is paid off? What if the vendor gets the property back on completion of forfeiture or foreclosure or quit claim deed in lieu of either?
- When are State and County transfer taxes payable and who is responsible for paying them?
- Should the Land Contract be recorded?
- If the vendee does not perform, what are the vendor's remedies, and what are the pros and cons of each? What is the procedure for each?
- If the vendor does not perform, what are vendee's remedies?
- What if the vendor dies or "goes missing" before Land Contract pay-off?
- What if the vendor fails to pay the underlying mortgage?
- Is vendor liable for injuries that occur on the property?
- Is the vendor liable for contamination of the property—whether by the vendee or for pre-existing contamination?
- Is the vendee liable for pre-existing contamination; and, does the vendee have a cause of action against the vendor for it?
- What is the vendor's duty to disclose the condition of the property?
- What can the vendor and vendee each do to protect themselves against the other's default, wrongful acts and omissions?
- When does title transfer to the vendee?
- What is the significance of the "split" title and what rights do the vendor and vendee each possess by virtue of their respective titles?
- Can either party mortgage his/her interest Land Contract interest and, if so, what special considerations are there for such a transaction?
- Can either party sell or otherwise transfer his/her interest in the land contract or property? What special considerations are there for such a transaction?
- What title considerations must the vendee worry about, e.g., construction liens, existing mortgage(s), easements and restrictions, adverse possessors, and rights of other parties in possession?

- Can the vendor's interest be subordinated to a construction lien imposed as a result of improvements made by the vendee?
- Can or should Land Contracts be used in commercial transactions as they are in residential ones and, if so, are there any special considerations for both parties?

## **II. Initial Concepts**

### **A. Land Contract**

A land contract is a written contract in which the seller (vendor) agrees to sell, and the purchaser (vendee) agrees to purchase real property. A land contract should contain the names and signatures of the vendor and vendee, describe the property, and set forth the purchase price and the time and terms for payment. *Range v Davison*, 242 Mich 73 (1928). Unlike the purchase money mortgage, the vendee under a land contract does not obtain full title to the property at closing. Rather, the vendee is said to have acquired "equitable title" with the right of possession, and the vendor retains "legal title." The land contract is not an instrument of conveyance, but rather is an agreement to convey land.

### **B. Purchase Agreement**

It may seem redundant (if not to you, then perhaps to your client) to use a purchase agreement with a land contract. While an initial purchase agreement is not a legal requirement, a purchase agreement is as necessary in a land contract transaction as in any other sale of real property; e.g., the opportunity for due diligence, title examination, and any necessary approvals are facilitated through the use of a purchase agreement. It is wise to include the form of land contract to be used at the closing of the transaction as a negotiated exhibit to the purchase agreement.

### **C. Dower**

A wife has a dower right in real property owned in fee by her husband and sold by him under a land contract. It is therefore necessary for a wife to sign the land contract to bar her dower, unless, at all times while the husband held fee title to the real property during the marriage, his interest was subject to an executory land contract. See, Michigan Land Title Standard 4.2 and supporting authority cited there. A wife has no dower in real property owned by her husband if, at all times during the marriage, his interest was that of a land contract vendee. See, Michigan Land Title Standard 4.3 and the supporting authority cited there.

### **D. Deed in Escrow**

The vendee should require, in both the purchase agreement and the land contract, that the deed to be tendered upon full payment of the land contract be held in escrow, usually with the title company. This will ensure that when the land contract is paid in full, the vendee will be able to record the deed. Without this protection the vendee, particularly in a residential transaction, may risk the possibility that the vendor can't be found or is dead. In addition, because it is not unusual for a residential land contract to be assigned many times by the seller or the buyer, when the last vendee makes the last payment, the vendee will know where to find the deed, even if the person who last collected the money is not in the record chain of title.

## **E. Usury**

Section 6 of MCL 438.31c states:

Notwithstanding subsection (5), lenders or vendors not qualified to make loans under subsection (5) may make, or may have made, mortgage loans and land contracts specified in subsection (2) on or after August 16, 1971, which mortgage loans and land contracts provide for a rate of interest not to exceed 11% per annum, which interest shall be inclusive of all amounts defined as the “finance charge” in section 106 of the truth in lending act, title I of Public Law 90-321, 15 U.S.C. 1605, and the regulations promulgated under that act, 12 C.F.R. part 226.

As a general rule, the maximum rate of interest on land contracts is eleven (11%) percent (inclusive of “finance charges”). This is, however, just the general rule. Suffice it to say that if the above quoted language is not enough to cause you to study the statute carefully before settling on an interest rate in excess of eleven (11%) percent, then perhaps the stiff penalties for charging an excessive rate of interest will be. *See e.g.*, MCL 438.32.

## **F. Recording the Land Contract**

The Land Contract is generally not recorded. Instead of recording the land contract, a Memorandum of Land Contract is typically recorded.

## **G. Drafting Considerations**

There are many Land Contract forms available for use. Obviously, though, there is no “one size fits all” and the attorney must be careful to understand all provisions of the form being used and modify it to reflect the parties’ needs and agreement.

## **H. Transfer Tax Issues**

Transfer taxes are not due when a land contract is signed, but when it is finally paid off. The exemption was originally put into the county transfer tax act to prevent the payment of the tax on the land contract when it was registered and then paying it again when the deed is transferred. The same language from the county tax was put into the State Transfer Tax when it was first imposed in 1995. Note: when a purchaser defaults on a land contract, the original seller may go to court to foreclose on the land contract. The foreclosure is a court-ordered sale of the purchaser’s equity in the property (county clerk’s sale) and is not exempt from transfer taxes. The exemption provided by MCL 207.526(h)(i) with respect to foreclosures does not apply.

# **III. The Biggest Impediment to Land Contracts, and the First Thing to Address - Is There an Existing Mortgage with a Due-on-Sale Clause?**

Alternatives being explored and employed by owners of distressed properties who are unable to find a buyer who qualifies for a mortgage, and their agents, include “creative” strategies such as a land contract, lease with an option to purchase, and a lease with a simultaneous purchase agreement obligating the lessee to close the purchase at a later date. Whether this device is workable is initially dependent on the language of the mortgage, namely, does it include a due-on-sale provision?

A typical due-on-sale clause reads similar to paragraph 18 in the FNMA/FHLMC form:

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

#### A. Can the Lender Enforce a Due-on-Sale Clause?

Generally, yes. Because of a growing body of state laws in the 1970s which attempted to impose limitations on enforcement of the due-on-sale clause in mortgages written by federally regulated lenders, the federal government adopted the Garn—St. Germain Depository Institutions Act of 1982 which prohibited states from doing so. However, the Act permitted states, within limits, to adopt their own laws governing due-on-sale clauses in mortgage written by *non-federally regulated* lenders only. Michigan enacted its "Due-on-Sale" Act (MCL 445.1621, *et seq.*) effective on October 15, 1985. This Act contained relevant definitions as follows:

- (a) "Assumed" means transfers of real property subject to a real property loan by assumptions, land contracts, wrap-around loans, or transfers subject to the mortgage or similar lien, and other like transfers.  
...
- (c) "Due-on-sale clause" means a contract provision which authorizes the lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest in the property, securing the real property loan is sold or transferred without the lender's prior written consent.  
...
- (e) "Lender" means a person or governmental agency, other than the Michigan state housing development authority, making real property loans, including, but not limited to, an individual, a federal or state chartered savings and loan association or savings bank, a state or national bank, a federal or state chartered credit union, an insurance company, or other lender approved as a mortgagee under the national housing act, 12 U.S.C. 1701 to 1750g; a manufactured housing retailer which extends credit; or any assignee or transferee, in whole or in part, of such a person or agency. Lender does not include an individual, with respect to a real property loan made by that individual, if during the calendar year in which that real property loan is made, the individual makes not more than 1 other real property loan.
- (f) "Loan secured by a lien on real property" means a loan on the security of any instrument which makes the interest in real property specific security for the payment of the obligation secured by the instrument.  
...

- (i) “Real property loan” means a loan, mortgage, advance, or credit sale secured by a lien on real property, on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, whether real or personal property.  
...
- (l) “Sale or transfer” means the conveyance of property, or of any right, title, or interest in property, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than 3 years, lease option contract, or any other method of conveyance of real property interest. MCL 445.1621.

The Act provides that a lender may enforce a due-on-sale clause in a real property loan in accordance with the terms of the loan contract. MCL 445.1622. The only limitation on enforcement under Michigan law is that:

A lender shall not enforce a due-on-sale clause in a residential real property loan in any circumstances under which enforcement is prohibited under section 341(d) of the Garn-St. Germain depository institutions act of 1982, 12 U.S.C. 1701j-3, as currently in force. MCL 445.1626.

The exemptions are:

- (d) Exemption of specified transfers or dispositions. With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon:
  - (1) the creation of a lien or other encumbrance subordinate to the lender’s security instrument which does not relate to a transfer of rights of occupancy in the property;
  - (2) the creation of a purchase money security interest for household appliances;
  - (3) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
  - (4) the granting of a leasehold interest of three years or less not containing an option to purchase;
  - (5) a transfer to a relative resulting from the death of a borrower;
  - (6) a transfer where the spouse or children of the borrower become an owner of the property;
  - (7) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;
  - (8) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; ...12 USCS §1701j-3

The result of the federal and state acts is that a due-on-sale clause is enforceable in all non-residential mortgages; and, enforceable in almost all residential mortgages, with only limited exceptions.

A “lease with option” is *not* an exception and will trigger the due-on-sale clause.

Sale on Land Contract is *not* an exception and will trigger the due-on-sale.

## **B. Are There Any Penalties for Trying to Evade Enforcement of the Due-on-Sale Clause?**

For the mortgagor, it is a default in the mortgage.

With respect to real estate licensees, attorneys, title companies, and anyone else assisting an owner avoid the effect of a due-on-sale clause:

- (2) Any person licensed to do business in this state who, while carrying on that business, knowingly advises a person selling or transferring property securing a residential window period loan not to notify a lender as required by section 3 or who knowingly otherwise aids or assists a person in evading the enforcement of a due-on-sale clause enforceable under this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense and shall be subject to revocation of his or her license. MCL 445.1628.

## **C. Are There Solutions to the Due-on-Sale Problem?**

### **1. Possible Purchase Agreement Language:**

Seller represents and warrants that:

- a. The premises are not subject to a mortgage; or,
- b. If the premises are subject to a mortgage:
  - i. The mortgage does not contain a “due-on-sale” clause prohibiting the sale of the Property on Land Contract; or,
  - ii. If the mortgage does contain a “due-on-sale” clause prohibiting sale of the Property on Land Contract, Landlord has obtained the mortgagee’s consent to the sale or, alternatively, agrees to pay the entire mortgage balance in full at or prior to Closing.

## **IV. Forfeiture and Foreclosure**

Because land contract forfeitures and foreclosures are perhaps the most commonly utilized remedies when the vendee breaches its obligations under the land contract these materials will focus on these two seller remedies. It should be noted, however, that the usual array of remedies to a seller or a buyer under a contract are typically available for a breach of a land contract (e.g., specific performance and action on the underlying debt).

Because of economy and expediency, forfeiture is often the remedy utilized by land contract vendors upon default of the vendee. The procedures for land contract forfeiture are detailed in the Summary Proceedings Act (MCL 600.5701, *et seq.* and the Michigan Court Rules (MCR 4.202).

Actions to foreclose upon a land contract are governed by MCL 600.3101 *et seq.*, and the Michigan Court Rules (MCR 3.410). Land contract foreclosure actions may occur less frequently than forfeiture actions because “such actions are, by comparison with summary proceedings, cumbersome, lengthy and therefore frequently ineffectual.” *Gruskin v*

*Fisher*, 405 Mich 51, 59 (1979). The Michigan Supreme Court has even implied that land contract foreclosures should be discouraged. *Id.* at 63.

**A. What Factors Determine Whether to Foreclose or Forfeit the Land Contract?**

- Is the value of the property in excess of the remaining debt of the vendee?
  - If yes: Forfeiture
  - If no: Foreclosure may be better.
- Is a deficiency judgment desired?
  - It is not available in forfeiture. Also, if the Land Contract contains a nonre-course provision, the vendor's remedy will be limited to recovery of the property. Forfeiture would be the appropriate remedy unless there are competing liens or other title problems that require Circuit Court jurisdiction.
- Is the vendee collectable?
  - If yes, foreclosure is better in order to get deficiency judgment.
- Is the vendee constantly going into default and then bringing the balance current?
  - If yes, and there is an acceleration clause, foreclosure is better.
- Is the property contaminated?
  - If yes, neither may be desirable—instead, sue on the debt only.
- Is the LC vendee likely to raise defenses or a counterclaim?
  - If so, forfeiture may be faster; although, money damages claims in excess of District Court jurisdiction will get removed to Circuit Court anyway.
- Is a receiver necessary or desirable?
  - The appointment of a receiver is usually associated with an action for foreclosure. Receiverships may be established in a forfeiture action under the Summary Proceedings Act as well. See, MCL 600.8302(3). A petition for appointment of a receiver may be unusual for a district court, however. Where appointment of a receiver is critical, a foreclosure action in the circuit court may be more appropriate since the circuit court routinely deals with such matters and may be more willing to appoint a receiver.
- Does the LC contain an acceleration clause?
  - If not, forfeiture is better unless there is a need to adjudicate title to the property.
  - MCL 600.3120 provides:
    - If after a judgment is entered against him, the defendant brings into court the principal and interest due with costs, the proceedings in the action shall be stayed; but the court shall enter a judgment of foreclosure and sale to be enforced by a further order of the court upon a subsequent default in the pay-

ment of any portion or installment of the principal, or of any interest thereafter to become due.

While MCL 600.3120 seems to provide some relief to the vendor who forecloses without the benefit of the right to accelerate, the expediency and economy of forfeiture proceedings under the Summary Proceedings Act may militate against foreclosure in many cases. Under very limited circumstances it may be possible to sue for future installments in a foreclosure action on the basis of anticipatory breach despite the lack of an acceleration clause in the land contract.

- Are there title issues which need to get resolved?

If so, foreclosure is better. District Court does not have jurisdiction to quiet title.

#### **B. Does LC Vendor Need to Get a Title Report or Commitment Before Either Remedy?**

Yes. The title report will show items such as unpaid taxes, construction liens, federal tax liens, notice of lis pendens which may involve litigation applicable to the vendee's interest in the real estate, execution levy, etc.

#### **C. What About Inspecting the Property?**

Yes—to see whether waste is being committed and a receiver necessary; and, to determine who is in possession and whether property has been abandoned.

#### **D. If the Vendor Commences a Forfeiture, May He Later Switch to a Foreclosure?**

In, *Gruskin v Fisher*, 405 Mich 51, 57–58 (1979), the Michigan Supreme Court held:

[W]hile the seller may not accept or take possession and still seek money damages, he may, even after sending notice of forfeiture, refuse tender of possession and either commence an action for money damages or for foreclosure of the land contract.

Under the common law, a vendor who had served a notice of forfeiture was deemed to have elected his remedy and could not thereafter sue for foreclosure and/or money damages. Under *Gruskin*, however, the common law has been modified so that the vendor does not elect its remedy until such time as there is a “tender of possession” of the property.

#### **E. Can the Vendor Retake Possession Without Either Forfeiture or Foreclosure?**

“Self-help” repossession may be available to a land contract vendor under limited circumstances. *Day v Lacchia*, 175 Mich App 363 (1989). Where there has been notice to the vendee of the forfeiture and where the property may be recovered peaceably (e.g., abandoned property), then repossession by self-help after forfeiture may be considered.

Self-help, however, will rarely be an acceptable remedy. Constructive possession by the vendee may be enough to defeat the right to self-help. The vendee may be able to compel the return of possession if the forfeiture is deemed unreasonable. *Rothenberg v Follman*, 19 Mich App 383 (1969). In addition, the vendor who wishes to resell the property

will have less difficulty obtaining an acceptable policy of title insurance where the property has been repossessed through judicial proceedings. This is particularly true where the land contract or a memorandum of land contract has been recorded.

## **V. Land Contract Forfeiture**

Land contract forfeitures are governed by the Summary Proceedings Act (MCL 600.5701, *et seq.*) and the Michigan Court Rules (MCR 4.202).

### **A. Preliminary Considerations**

Section 5726 states that an action under the Summary Proceedings Act may not be filed unless the land contract expressly provides “for termination or forfeiture, or give[s] the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract.” The first step is to read the land contract. The phrase “moneys required to be paid” as used in the Summary Proceedings Act “shall not include any accelerated indebtedness.” See, also Section 5750, discussed, below. Vendor’s counsel should make sure the vendor understands that if a Writ of Restitution/Order of Eviction is issued pursuant to a judgment of forfeiture, recovery of amounts due subsequent to the issuance of the Writ/Order will be barred.

Section 5728 states that the forfeiture action cannot be filed until:

1. written notice of forfeiture has been served upon the vendee (or the person in possession), and
2. the time for curing the default has expired.

Pursuant to Section 5728, a minimum of fifteen days must be given to cure the default. The parties may agree in writing for a longer cure period.

Section 5730 states that the notice of forfeiture may be served in any of the following ways:

1. by hand delivery to the vendee or person holding possession under him; or,
2. by delivering it on the property to a member of the vendee or possessor’s family or household, or an employee, of suitable age and discretion, with a request that the notice be delivered to the vendee or the possessor; or
3. by sending it by first-class mail addressed to the last known address of the vendee or the person holding under him. If the notice is mailed, the date of service is the next regular day for delivery of mail after the day it was mailed.

Accepting partial payments on the land contract after service of the notice of forfeiture but prior to the expiration of the time for cure as indicated in the notice will not act as a waiver of the forfeiture. *Reinecke v Sheehy*, 47 Mich App 250 (1973).

Pursuant to Section 5732 the district court has broad power to “make and enforce all other writs and orders and do all other things necessary to hear and determine summary proceedings.”

Pursuant to MCL 600.8302, in cases brought under the Summary Proceedings Act, the district court has the power to determine certain equitable claims, to determine a right, interest, obligation, or title in land, and to establish escrow accounts and receiverships.

The complaint must comply with the requirements of MCR 4.202(C) and MCR 4.202(D). Joinder of additional claims is permitted in accordance with Section 5739 and MCR 4.202(I). The court has the discretion to order separate disposition of the claim for possession. This can be an important means of avoiding undue delay on the claim for possession, particularly where a counterclaim has been filed. Parties who must be named as defendants include:

The vendee named in the land contract;

Others known to the plaintiff who claim an interest in the premises under the contract, and

Those in possession of the property, unless they have been released from liability.

The complaint must comply with the general pleading requirements of the court rules and must allege:

The original selling price;

The principal balance due;

The amount in arrears, and

any other material breach with particularity.

A copy of the notice of forfeiture, with proof of service, must be attached to the complaint.

The summons “shall command the defendant to appear for trial” within 30 days, and the summons must be served not less than 10 days before the trial date. Section 5735(2)(a). Alternatively, by local court rule the court may provide that the trial date be set “within 10 days after service of the summons upon the defendant.” Section 5735(4)(a). The time for filing an answer to the complaint is also stated on the summons. In addition, the “proceeding shall be heard within 7 days after the defendant’s appearance or trial date and shall not be adjourned beyond that time other than by stipulation of the parties either in writing or on the record,” unless local court rules provide otherwise. Section 5735(6); see also, MCR 4.202(H)(2)(c).

In addition to complying with the general pleading requirements, the answer must “allege those matters on which the defendant intends to rely to defeat the claim or any part of it.” MCR 4.202(H)(1). The answer must be filed “within the time permitted by statute after service of the summons on the defendant”—i.e., on or before the hearing date as stated on the summons. MCR 4.202(E).

While common contractual and equitable defenses are available to the defendant in forfeiture actions, there are no special or statutory affirmative defenses unique to forfeiture actions brought under the Summary Proceedings Act (as opposed to landlord/tenant actions which do have statutory defenses enumerated in the Summary Proceedings Act). Typical affirmative defenses include, breach of contract, acceptance of payment subsequent to notice of forfeiture and prior to litigation and inequitable forfeiture.

The filing of counterclaims is permitted in accordance with Section 5739 and MCR 4.202(I). The court must try the counterclaim together with the claim for possession if the adjudication of the counterclaim will affect the amount the defendant must pay to prevent issuance of the Writ of Restitution/Order of Eviction, “unless it appears to the court that the counterclaim is without merit.” And, a counterclaim which is “sufficiently shown to exceed the court’s jurisdiction” must be removed to the circuit court.

Jury trials are available in summary proceedings pursuant to Section 5738. The jury demand, and payment of the applicable fee, must be made at the time of the initial hearing, or the right to a jury will be deemed waived.

In the commercial land contract setting, provisions providing for the waiver of jury trials may be enforceable. See, e.g., *Nystrom v Bloomfield Woodward Avenue Associates*, No. 106547, (Michigan Court of Appeals, February 14, 1990) (unpublished) addressing this issue in a commercial lease.

Section 5741 describes the nature and requirements of a judgment for possession under the Summary Proceedings Act. The judgment is a judgment for possession of the property which may be enforced by a Writ of Restitution/Order of Eviction. It is not a money judgment upon which execution for collection may be had. The trier of fact must “determine the amount due or in arrears at the time of trial which amount shall be stated in the judgment for possession.” That amount must be stated in the judgment for the “purpose of prescribing the amount which, together with taxed costs, shall be paid to preclude issuance of the writ of restitution [i.e., the Order of Eviction].”

MCR 4.202(J) requires that the judgment:

State when and under what conditions the writ of restitution will issue;

State that an appeal or post-judgment motion to challenge the judgment may be filed within ten days;

Must be mailed or delivered by the court to the parties at which time the applicable redemption period begins.

Note: Making an accurate calculation of the redemption period is crucial to vendees who hope to redeem, but who need as much time as possible to pay the amount required to redeem. They should not assume that the judgment date is the same as the date of mailing or delivery.

MCR 4.202(H)(2) provides that if the defendant fails to appear, the plaintiff may move for entry of a default judgment. The court may adjourn the hearing for up to seven days (MCR 4.202(H)(2)(c)), or, if satisfied that the complaint is accurate, enter judgment in accordance with Section 5741 and MCR 4.202(J). The default judgment is mailed to the defendant by the court clerk. Since the time period for applying for the Writ of Restitution/Order of Eviction does not begin until the date of mailing of the judgment, do not assume that the judgment date is the same as the date of mailing. To accurately calculate the date when the Writ/Order may issue, always confirm the date of mailing.

Section 5744 and MCR 4.202(K) govern issuance of the writ of restitution (Order of Eviction). Return of possession of the property to the vendor requires the issuance, and execution of the writ of restitution by a sheriff or other person authorized by the court to perform such functions. Section 5744(1). Issuance of the writ of restitution cuts off the

defendant's equitable right of redemption. Section 5744(7). The writ of restitution shall not issue if the defendant exercises its equitable right of redemption by paying the amount stated in the judgment, together with taxed costs (and curing any other material breach), within the time stated in the judgment. Section 5744(6).

Under MCR 4.202(K), the plaintiff may request issuance of the Writ of Restitution as follows:

By written application, upon the expiration of the vendee's equitable right of redemption (discussed, below).

The application must be verified by a person having knowledge of the facts stated; must show the conditions under which money due under the judgment was paid and accepted, if any, and must state whether the party awarded judgment has complied with its terms.

A hearing for issuance of the Writ of Restitution/Order of Eviction is required only if a partial payment of the judgment amount has been accepted. In such case, the defendant must be given notice and opportunity to appear prior to issuance of the Writ/Order. MCR 4.202(K)(2).

The vendee may prevent issuance of the Order of Eviction by paying the judgment, together with taxed costs, and curing any other material breach, within the time stated in the judgment. Section 5744(6).

The formula for calculating the time period during which the equitable right of redemption may be exercised (or the writ of restitution issued) is found in Section 5744(3), which states that the writ of restitution shall not issue until the expiration of ninety days after the entry of judgment for possession if less than 50% of the purchase price has been paid, or until 6 months after entry of judgment for possession is 50% or more of the purchase price has been paid.

Appeals of judgment under the Summary Proceedings Act are controlled by Section 5753 and MCR 4.202(L). Appeals are made to the circuit court of the same county in which the matter was tried. The general rules for appealing district court rulings to the circuit court apply, except as modified by court rule. See generally, MCR 7.101 *et seq.* The principal modification relates to the time for filing the appeal which is ten days instead of twenty-one days from the date of judgment.

Section 5750 acts to limit further recovery under the land contract to the following extent:

A judgment for possession pursuant to a forfeiture action merges and bars any claim for money payments due or in arrears under the contract at the time of trial, and

A judgment for possession which also results in the issuance of a writ of restitution bars any claim for money payments which would have become due under the contract subsequent to the time of issuance of the writ.

Recovery may be had, however, for the fair rental value of property for the period between the notice of forfeiture and the issuance of the writ of restitution. *Durda v Chembar Development Corp.*, 95 Mich App 760 (1980).

Recovery may not be had for money damages due under the land contract, including real estate taxes that the vendee was obligated to pay under the land contract. *Michigan National Bank, Trustee v Cote*, 451 Mich 180 (1996).

## **VI. Foreclosure of Land Contracts**

Foreclosure of land contracts is governed by MCL 600.3101 *et seq.*, and the Michigan Court Rules (MCR 3.410).

Section 3101 states that the circuit court has jurisdiction to foreclose land contracts, except those land contracts held by the Michigan state housing development authority. Section 3115 gives the court the power to order the sale of the property but states that the sale cannot occur until three months after the filing of the complaint. Section 3180 states that the action is equitable in nature.

Venue is proper in the county where all or any part of the property is located. MCL 600.1605.

Section 3105(1) operates to limit the vendor's ability to foreclose where a money judgment has been previously obtained for all or part of the money:

If a judgment has been obtained in any other civil action for the money, or part thereof, demanded in the complaint in an action to foreclose...a land contract, no proceeding shall be had in the action to foreclose unless the sheriff or other proper officer has returned an execution as unsatisfied, in whole or in part, and certified that he can find no property of the defendant out of which to satisfy the execution except the...premises.

Section 3105(2) operates to prohibit the vendor from initiating any separate action to recover the debt while the foreclosure action is pending and after judgment has entered, unless authorized by the court:

After a complaint has been filed to foreclose a...land contract, while it is pending, and after a judgment has been rendered upon it, no separate proceeding shall be had for the recovery of the debt...or any part of it, unless authorized by the court.

MCR 3.410(A) states that the general rules of procedure apply to foreclosure actions. Thus, pursuant to MCR 2.113(F) the land contract must be attached to the complaint, with few exceptions. These exceptions notwithstanding, because MCR 1.112(E)(1) states that the execution of the land contract is admitted unless expressly denied in the answer, the land contract should always be attached to the complaint.

MCR 3.410(B)(1) requires that the plaintiff state in the complaint "whether an action has ever been brought to recover all or part of the debt secured by...the land contract and whether part of the debt has been collected or paid."

MCR 3.410(B)(2) states that the plaintiff need not allege in detail the rights and interests of the defendant who claim a right or interest in the property subsequent to the recording of the land contract (if any). A general allegation that the "defendants have or claim some interest in the premises as subsequent purchasers, encumbrancers, or otherwise," is sufficient. Although this frees the vendor from extensive investigation, due process requirements suggest that vendor's counsel err on the side of naming as defendants all who appear to claim a right or interest in the property.

It should be noted that there is no requirement in the statute or court rules that a foreclosure action be preceded by a notice of foreclosure or notice of acceleration. *Dumas v Helm*, 15 Mich App 148 (1968). If, however, the land contract requires notice of foreclosure (or acceleration) to the vendee, be sure to allege such notice if possible and, if applicable, attach a copy of the notice to the complaint. See, e.g., *Minchella v Fredericks* 138 Mich App 462 (1984)(rule that notice is not prerequisite to foreclosure applied but questioned). As to acceleration, it is recommended that the complaint allege that acceleration has occurred, if not prior to filing the complaint, as a result of the filing of the complaint. It has been held that the institution of the foreclosure proceedings is sufficient notice of acceleration. *Windorf v Ferris*, 154 Mich App 201 (1986).

Although Section 3150 requires the court to determine which defendants are personally liable for the land contract debt and also requires the court to enter a deficiency judgment (if applicable) against such defendants, it may be helpful to include in the complaint a separate count or prayer for relief for a judgment for any deficiency.

Section 3160 provides for entry of a deficiency judgment after sale against all who were determined to be personally liable for the debt. If a guarantor or other third party may be liable for the debt, such persons should also be named as defendants.

If the contract calls for payment of attorneys fees, the complaint should contain an allegation to that effect in order to include attorney's fees as part of the deficiency judgment. Vendors, however, should never file any lawsuit expecting to recover their attorney's fees.

In order to put the world on constructive notice of the pending foreclosure action, a notice of lis pendens should be filed with the register of deeds.

The general rules of procedure apply to the answer. MCR 3.410(A).

If a copy of the land contract has been attached to the complaint its execution will be deemed admitted unless expressly denied in the answer. MCR 1.112(E)(1)

If acceleration is not permitted and anticipatory breach is not claimed or permitted, the complaint must be dismissed pursuant to Section 3110 "upon the defendant's bringing into court, at any time before the judgment of sale, the principal and interest due, with costs."

Because foreclosure is an equitable action, equitable defenses are available to the vendee. See, e.g., *Peters v Dorr*, 263 Mich 318 (1933)(because foreclosure would be inequitable, decree was entered for defendants allowing payment of accrued interest in installments). Note, however, that waiver may not be a defense to foreclosure actions. See, e.g., *Minchella v Fredericks*, 138 Mich App 462 (1984).

If the vendee has withheld payments because of a good-faith dispute with the vendor about the condition of the property, the vendor may be prohibited in equity from enforcing an acceleration clause. *Moore v Bunch*, 29 Mich App 498 (1971).

Unlike forfeiture actions under the Summary Proceedings Act where trial of counterclaims must be bifurcated (in most cases), counterclaims in an action to foreclose may be tried together with the foreclosure action. This may be particularly important where the reason for the nonpayment of money or other failure to perform is directly related to the subject matter of the counterclaim. See e.g., *Moore v Bunch*, 29 Mich App 498 (1971).

Because foreclosure actions are equitable actions, however, the vendee should be careful in deciding whether or not to make a jury demand on its counterclaims since this could result in bifurcation.

Pursuant to Section 3115, the judgment for foreclosure of a land contract may not enter until three months after the filing of the complaint.

The judgment should indicate the time during which the defendant may pay the judgment amount to avoid the foreclosure sale. The minimum time is 42 days. MCR 3.410(C).

Pursuant to Section 3150, the “court may order and compel the delivery of the possession of the premises to the purchaser at the sale.” Unless the court orders possession delivered to the purchaser at the sale, the vendee may remain in possession throughout the redemption period.

Section 3150 requires the court to determine which defendants are personally liable for the land contract debt and requires the court to enter a deficiency judgment against such defendants for amounts remaining unpaid after applying the amount received from the foreclosure sale. In such cases, the clerk of the court “shall issue execution for the amount of the deficiency, upon the application of the attorney for the plaintiff, without notice to the defendant or his attorney.”

Pursuant to Section 3160 the deficiency judgment may enter against guarantors or third parties who are personally liable for the debt and who have been made parties to the action.

Pursuant to Section 3145, where the defendants who were personally liable for the debt were also responsible for payment of taxes and/or insurance, the judgment may provide for the adding to the amount necessary to redeem the property amounts paid during the redemption period for taxes and insurance. Such amounts, however, will not be added to the amount of the deficiency judgment if the property is not redeemed. Section 3145 contains specific requirements that should be carefully complied with.

Pursuant to Section 3155, the court may “fix and determine the minimum price at which the real property...may be sold at the sale....”

Section 3165(1) states that if the property can be sold in parcels “without injury to the interests of the parties” then the judgment “shall” require the sale of only as many parcels as are necessary to pay the judgment amount plus costs.

Section 3165(3) states that if a sale of the entire parcel is “most beneficial to the parties” then the judgment “shall” require the sale of the entire parcel.

The judgment should require the Sheriff to file a confirmation of sale report with the court, detailing the procedures followed in consummating the sale. Such reports are not required under the statute or the court rule but are referred to in the statute. Requiring such a report may help reduce disputes regarding the propriety of the sale.

Section 3120 provides for stay of further proceedings, including the sale, if after entry of judgment the defendant “brings into court the principal and interest due with costs....” Section 3120 further provides, however, that the court must “enter a judgment of foreclosure and sale to be enforced by a further order of the court upon a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to become due.”

Appeals of foreclosure actions are made in the same manner as any appeal from the circuit court. See generally, MCR 7.201 *et seq.*

Section 3115 and MCR 3.410(C) set forth the publication and timing requirements for the notice of sale. The general publication of notice requirements for execution upon real estate should be followed. MCL 600.6052.

The sheriff should be alerted if an upset price has been stated in the order.

Section 3125 states that the sale shall be conducted by

the county clerk of the county in which the judgment was rendered or of the county where the land or some part of the land is situated, by a deputy county clerk, or by some other person duly authorized by the order of the court. These sales shall be at public sale between the hour of 9 a.m. and 4 p.m. and shall take place at the courthouse or place of holding of the circuit court in the county in which the land or some part of it is situated on at any other place the court directs. The sale is subject to section 6091 (MCL 600.6091).

Section 3130 contains specific requirements for the contents of the deed. The deed must be recorded with the county register of deeds as soon as possible and not later than twenty days after the sale. If the property is redeemed, the register of deeds is to mark “Redeemed” on the record of the deed together with the date of the marking. The cost of recording the deed are to be included in the “costs and expenses allowed by law.” If the property is not redeemed, the deed becomes operative upon expiration of the redemption period.

Disposition of the proceeds from a sale in an action which included acceleration is governed by Section 3135. Subsection (1) states that the proceeds of every sale under a judgment shall be applied to the discharge of the debt adjudged by the court to be due and of the costs awarded; and if there is any surplus it shall be brought into court for the use of the defendant, or of the person entitled to it, subject to the order of the court.

Subsection (2) provides that if the surplus or any part of it remains in the court for the term of 3 months without being applied for, the circuit court may direct that it be put out at interest under the direction of the court for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of the court.

Disposition of the proceeds from a sale in an action which did not include acceleration is governed by Section 3165(2) and 3165(3). Section 3165(2) provides that where the sale was not of the entire parcel but of separate parcels, if there is any default subsequent to the judgment, in the payment of any portion or installment of the principal or of any interest due upon the...land contract, the court may, upon the petition of the plaintiff, by a further order founded upon the first judgment, direct a sale to be made of as much of the premises subject to the...land contract as is sufficient to satisfy the amount due, with costs of the petition and subsequent proceedings on it, and the same proceedings may be had as often as a default happens.

Section 3165(2) provides that where the sale was for the entire parcel, the proceeds of the sale shall be applied to the interests, portion, or installment of the principal due as well as towards the whole or residue of the sum secured by the...land contract and not due and payable at the time of the sale. And if the residue does not bear interest the court may direct that the residue be paid with a rebate of the legal interest for the time during which

the residue will not be due and payable; or the court may direct that the balance of the proceeds of the sale, after paying the sum due with costs, be put out at interest for the benefit of the plaintiff, to be paid to him as the installments or portions of the principal, or the interest become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

Subsequent to the foreclosure sale, the defendant's interest in the property may be redeemed in accordance with the requirements of Section 3140. The defendant has six months from the time of sale to redeem the property by paying the amount of the purchaser's bid plus interest at the land contract rate. The foreclosure deed becomes void upon tender of these amounts. In the case of a sale of separate parcels, the deed becomes void only as to those parcels redeemed. If the judgment amount included tax and insurance payments made by the vendor during the redemption period, these amounts must be included as part of the tender to redeem. Such amounts paid by the vendor after the Sheriff has submitted the confirmation of sale report may not be added to the redemption amount unless the requirements of Section 3145 have been met.

## Appendix 1 Sample Land Contract Form

### LAND CONTRACT

This Land Contract is made effective on \_\_\_\_\_ 201\_, between \_\_\_\_\_  
("Seller"), whose address is \_\_\_\_\_, and \_\_\_\_\_  
\_\_\_\_\_ ("Buyer"), whose address is \_\_\_\_\_.

### TERMS AND CONDITIONS OF THE CONTRACT

Seller and Buyer agree as follows:

**1. Description of the Land.** Seller will sell and convey to Buyer land in the \_\_\_\_\_ of  
\_\_\_\_\_, \_\_\_\_\_ County, Michigan, described as:

See **Exhibit A** attached

Tax Identification No. \_\_\_\_\_  
Commonly known as \_\_\_\_\_

(the "Land" or the "Property"),

subject to any applicable building and use restrictions and to any easements or zoning affecting the land.

**2. Terms of Payment.** The full consideration for the sale of the land to Buyer is  
\_\_\_\_\_ (\$\_\_\_\_\_) dollars (the "Purchase Price").  
\_\_\_\_\_ (\$\_\_\_\_\_) dollars has been paid to Seller  
simultaneous with execution of this Land Contract, the receipt of which Seller acknowledges, and the  
balance of \_\_\_\_\_ (\$\_\_\_\_\_) dollars is to be paid to Seller, with  
interest on any unpaid part at the rate of \_\_\_\_\_ (%) percent per year. The balance of the  
purchase price and interest will be paid in monthly installments of \_\_\_\_\_ (\$\_\_\_\_\_) dollars each, or more at Buyer's option and without any prepayment penalty, beginning on \_\_\_\_\_, 2010, and on the \_\_\_\_ day of each month thereafter. Payments are to be applied first to interest and the balance to principal. The entire Land Contract balance, and all other amounts owing under it, must be fully paid within \_\_\_\_\_ (\_\_\_\_) years from the date of this Land Contract, notwithstanding anything in this Land Contract to the contrary.

**3. Seller's Duty to Convey.** Seller will execute and deliver to Buyer or Buyer's assigns, on the payment in full of all sums owing under this Land Contract, a good and sufficient warranty deed conveying

title to the property, subject to the existing building and use restrictions, easements, and zoning ordinances, if any, but free from all other encumbrances except those set forth in Schedule \_\_\_\_\_, Section \_\_\_\_\_ of the \_\_\_\_\_ (“Title Company”) Commitment No. \_\_\_\_\_ (the “Commitment”) and those that have accrued or attached since the date of this Land Contract through the acts or omissions of persons other than Seller or Seller’s assigns. The parties agree that the deed will be executed simultaneous with execution of this Land Contract and will be held in escrow by the title insurance company pursuant to an escrow agreement of the same date as this Land Contract, the cost of which will be borne exclusively by Buyer.

**4. Title Insurance.** Seller will deliver to Buyer as evidence of title an ALTA owner’s policy of title insurance insuring title to the property in Buyer, the effective date of which will be approximately the date of this Land Contract.

**5. Buyer’s Duty to Purchase.** Buyer will purchase the Land and pay Seller the purchase price, with interest as provided in paragraph 2.

**6. Adherence to Building and Use Restrictions.** Buyer will use, maintain, and occupy the Land in accordance with any and all applicable building and use restrictions.

**7. Adherence to Regulations.** Buyer will keep the land in accordance with all police, sanitary, or other regulations imposed by any governmental authority.

**8. Maintenance of the Premises; Waste; Hazardous Materials.** Buyer will keep and maintain the Land and buildings in as good a condition as they are at the date of this Land Contract, reasonable wear and tear excepted, and will not waste, remove, or demolish any improvements on the Land or otherwise diminish the value of Seller’s security without Seller’s written consent. Buyer warrants and represents that Buyer will not permit any liens to attach to the Property without Seller’s written consent.<sup>12</sup> Hazardous Materials. The Buyer warrants and covenants that the Premises shall not be used by Buyer, or anyone acting by or through Buyer in the disposal of or to refine, generate, manufacture, produce, store, handle, treat, transfer, release, process or transport any hazardous waste” or “hazardous substance”, as the terms hazardous waste and hazardous substance are currently defined in Section 3001 of the Resource Conservation and Recovery Act of 1976 42 USC 6901 et seq. as amended (“RCRA”), Section 101 (4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 USC 9601 et seq. (“CERCLA”), or the Superfund Amendments and Reauthorization Act, Public Law 99–499, October 17, 1986 (“SARA”), respectively (hereinafter collectively referred to as “Hazardous Materials”). Buyer agrees to keep the Premises free of Hazardous Materials and, without limiting the foregoing, Buyer shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of,

transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, State and Local Laws and Regulations, nor shall Buyer cause or permit, as a result of any intentional or unintentional act or omission on the part of Buyer, a release of Hazardous Materials onto the Premises. Buyer agrees to promptly deliver to Seller copies of all notices received by Buyer from any Federal, State or Local Authority regarding environmental problems affecting the Premises. The provisions hereof shall be in addition to any and all other obligations and liabilities Buyer may have to Seller in common law and shall survive the repayment of all sums due under the Land Contract and the satisfaction of all other obligations of Buyer hereunder. If Hazardous Materials are present on or under the Premises in violation of the requirements of this Paragraph, Buyer shall: (i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises in accordance with all applicable Federal, State and Local Laws, Ordinances, Rules, Regulations and Policies, to the satisfaction of Seller, and in accordance with the orders and directives of all Federal, State and Local Governmental Authorities; (ii) defend, indemnify and hold harmless Seller, its successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising, from and after the date of Land Contract, out of or in any way related to: (A) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials; or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Seller, which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses.

**9. Insurance and Taxes.**

(a) Buyer will keep the land and all improvements and fixtures thereon insured against loss and damage by fire and the perils covered by extended coverage insurance (including public liability insurance), and against such other risks and in such amounts not less than its full replacement value (excluding foundations), with such insurer(s) as may from time to time be reasonably approved by Seller, with proceeds thereof payable to Seller under a standard mortgagee endorsement and loss payable endorsement thereto, and shall contain an agreement by such insurer(s) that such policy(ies) shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Seller. Certificates of insurance or copies of the policies of all such insurance and all renewals thereof, together with receipts evidencing payment in full of the premiums thereon, shall be delivered promptly to Seller. In the event of loss or damage, the proceeds of said insurance shall be paid to Seller. In the event Buyer is in default beyond any notice and cure period, then Seller is authorized to adjust and compromise such loss with prior notice to but without the consent of Buyer, to collect, receive and receipt for such proceeds in the name of Seller and Buyer and to endorse Buyer's name upon any check in payment thereof. Anything herein to the contrary notwithstanding, any insurance proceeds shall be first applied toward reimbursement of all costs and expenses of Seller in collecting, said proceeds, and the balance, at the Seller's election, used in any one or more of the following ways: (a) apply the same or any part thereof upon the Land Contract secured hereby, whether such Land Contract then be matured or unmatured, (b) use the same or any

part thereof to fulfill any of the covenants contained herein as Seller may determine, (c) use the same or any part thereof to replace or restore the Property to a condition satisfactory to the Seller, or (d) release the same to Buyer.

Buyer will pay all taxes and special assessments levied on the Land after the date of this Land Contract before any penalty for nonpayment and will submit receipts to Seller promptly after payment as evidence of payment.

*[If the amount of the estimated monthly cost of taxes, assessments, and insurance is inserted in paragraph 9(b) below, the method of payment of these items as indicated in that paragraph shall be adopted. If this amount is not inserted, delete paragraph 9(b) and use the method of payment in the above paragraph.]*

(b) Buyer shall pay monthly, in addition to the monthly payments stipulated above, \$ \_\_\_\_\_, which is an estimate of the monthly cost of taxes, assessments, and insurance premiums for the premises, which Seller shall credit to the unpaid principal balance due on the contract. If Buyer is not in default under the terms of this contract, Seller shall pay from Buyer's account the taxes, assessments, and insurance premiums mentioned in paragraph 2(d) when due and before any penalty attaches and submit receipts to Buyer on demand. These amounts shall be added to the principal balance of this contract. The amount of the estimated monthly payment may be adjusted under this paragraph from time to time so that the amount received approximates the total sum required annually for taxes, assessments, and insurance. This adjustment shall be made on the demand of either of the parties and Buyer shall pay any deficiencies on Seller's demand.

**10. Acceptance of Title.** Buyer has examined the Commitment and is satisfied with the marketability of the title shown in the Commitment. Seller will pay or has paid for and will promptly cause to be delivered to Buyer the owner's title policy as set forth above.

**11. Acceptance of the Property.** Buyer has examined the Land and the buildings (if any); is satisfied with their physical condition; and agrees to accept the property "as is."

**12. Encumbrances on Seller's Title.** If Seller's title is evidenced by a Land Contract or is encumbered by a mortgage, Seller will meet the payments of principal and interest on that obligation as they mature and promptly produce evidence of payment to Buyer on a written demand. If Seller defaults, Buyer may make these payments, which will be credited on the sums matured or first maturing on this Land Contract with interest at the rate set forth in paragraph 2. If proceedings are commenced to recover possession of the Land or to enforce the payment of a contract or mortgage because of Seller's default, Buyer may, at any time while such proceedings are pending, encumber the Land by a mortgage securing whatever sums can be obtained on whatever terms are required and, with the proceeds, pay and discharge the mortgage or purchase money lien. Any such mortgage will be superior to the rights of Seller in the property. Buyer will then pay the principal and interest on the mortgage as they mature, and those payments will be credited toward the sums matured or first maturing under this Land Contract.

**13. Nonpayment of Taxes or Insurance.** If Buyer defaults in the payment of any insurance premium or tax or special assessment before the date on which interest and penalties accrue or in the delivery of insurance policies as provided in paragraph 9, Seller may, at Seller's sole option, pay the tax, special assessments, or premiums or procure the insurance and pay the premiums. Any amount so paid will

be a further lien on the Land immediately payable by Buyer to Seller, with interest at the rate set forth in paragraph 2. Any amount so paid will, until repaid by Buyer, be deemed an increase to the purchase price for the purpose of determining any amount Buyer would have to pay to redeem the property after forfeiture or foreclosure.

**14. Assignment.** Seller may assign this Land Contract, provided any existing mortgage on the Land granted by Seller is first paid and discharged or otherwise assumed by Seller's assignee. No assignment or conveyance by Buyer will create any liability against Seller until a duplicate of an executed, witnessed, and acknowledged assignment or conveyance, together with the residence address of the assignee or grantee, is delivered to Seller. Buyer's liability under this Land Contract will not be released or affected in any way by the delivery of such an assignment or a conveyance or by Seller's endorsement of receipt or acceptance of such an assignment or a conveyance.

**15. Possession.** Buyer will have the right to possession of the Land from and after the date of this Land Contract, unless otherwise provided in this Land Contract. Buyer will be entitled to retain possession only as long as Buyer does not default on the terms and conditions of this Land Contract. If the Land or buildings are vacant or unimproved, Buyer is deemed to be in constructive possession only, and this possessory right will cease and terminate after service of a notice of forfeiture of this Land Contract. The erection of signs or the placement of equipment or vehicles on vacant or unimproved Land does not constitute actual possession by Buyer. Seller's delivery of possession to Buyer is not subject to the rights of any other persons or entities except: \_\_\_\_\_.

**16. Right to Forfeit.** If Buyer fails to meet the terms and conditions of this Land Contract, the Seller, immediately after a default, may declare this Land Contract forfeited and void; retain whatever Buyer has paid under this Land Contract and all improvements that may have been made on the Land, together with additions and accretions; consider and treat Buyer as a tenant holding over without permission; take immediate possession of the premises; and remove and put out Buyer and all occupants, as permitted by law. If Seller relies on a notice of forfeiture to terminate rights under this Land Contract, the notice must specify all unpaid moneys and other breaches of this Land Contract and declare the forfeiture of this Land Contract effective in 15 days after service unless the money is paid and other breaches are cured within that time.

**17. Right to Accelerate.** If Buyer fails to meet the terms and conditions of this Land Contract, the default continues for 45 days or more, and Seller wants to foreclose this contract in accordance with Michigan law, Seller may accelerate and declare immediately due the entire unpaid balance due under this Land Contract.

**18. Notice to Buyer.** Any declarations, notices, or papers necessary or proper to terminate, accelerate, or enforce this contract are rebuttably presumed to have been served on Buyer if the instrument has been enclosed in an envelope with first-class postage fully prepaid, addressed to Buyer at the address set forth in the heading of this contract or at the latest other address that has been specified by Buyer and receipted for in writing by Seller, and deposited in the U.S. mail.

**19. Removal of Liens.** Buyer will keep the property free and clear of all liens and encumbrances that arise due to Buyer's acts or omissions. If Buyer, by Buyer's acts or omissions, causes or permits any non-permitted lien or encumbrance to attach and fails to remove it (which, for a construction lien, may be accomplished by bonding-off the lien in accordance with the Construction Lien Act) within 30 days after

its attachment and a written demand for removal, Seller will have the right, but not the obligation, to remove the lien or encumbrance at Seller's expense and to receive prompt payment for the expense with interest at the rate provided in paragraph 2.

**20. Applicable Law.** This Land Contract shall be construed in accordance with and governed by the laws of the State of Michigan.

**21. Successors.** This Land Contract will bind and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors, and assigns.

**22. Notices.** All notices required to be made under this Land Contract will be deemed completed and legally sufficient if mailed by certified mail, return receipt requested, or if delivered personally or by courier service, to the following addresses or another address a party designates in writing:

For Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**23. Memorandum.** Either party may record a memorandum of this Land Contract, and each agrees to execute one at the other's request.

**24. Capacity of the Parties.** Any individual parties to this Land Contract represent themselves to be of full age. Any corporate parties to this Land Contract represent themselves to be existing corporations with their charters in full force and effect. Any partnership parties to this Land Contract represent themselves to be existing partnerships with their certificates in full force and effect. Any limited liability company parties represent themselves to be existing limited liability companies with their Articles of Organization in full force and effect.

**25. Interpretation of the Land Contract.** The pronouns and relative words used in this Land Contract are written in the singular. If, however, more than one person joins in the execution of the Land Contract as Seller or Buyer or either party is a corporation or another entity, such words are to be read as if written in the plural or neuter, respectively.

**26. Waiver of Dower.** If Seller is a married man whose wife is a resident of Michigan, and Seller's wife does not hold any interest in title other than dower, Seller's wife, for valuable consideration, joins in the execution of this Land Contract and agrees to join in the execution of the deed to be made in fulfillment of this Land Contract. Seller's wife executes this Land Contract and the deed solely to waive her right to dower.

**27. Late Charges; Costs of Enforcement.** In addition to all other payments due in accordance

with the Land Contract, if any monthly installment of principal and interest is not punctually paid when due, Buyer shall pay Seller for each monthly installment or any fraction thereof that remains unpaid beyond a ten (10) day grace period a late charge equal to \_\_\_\_\_ (\$ \_\_\_\_\_) dollars per day from the due date until paid. In the event that Seller is required to take action against Buyer as a result of Buyer's default, Buyer shall be liable to Seller for all costs of enforcement, including reasonable attorneys fees incurred by Seller. These costs may be added to the amount required to be paid by Buyer to cure the default or to the sum established by any judgment for possession which must be paid to avoid issuance of a Writ of Eviction.

**28. Acceleration of Balance Due upon Transfer of the Property.** Buyer shall not sell, assign, convey or transfer (collectively "transfer") any interest in the Premises or this land contract without Seller's prior written consent. If Buyer is not a natural person, the sale or transfer of a beneficial interest in Buyer shall be considered a transfer of the Property. If the Property is transferred without Seller's prior written consent, Seller may require immediate payment in full of all sums secured by this Land Contract which will include any unpaid principal and interest. If Seller exercises this option, Seller shall give Buyer notice of acceleration. Seller shall be entitled to exercise this option at any time at Seller's sole and uncontested discretion. The notice shall provide a period of not less than fifteen (15) days from the date the notice is delivered or mailed within which Buyer must pay all sums secured by the Land Contract. If Buyer fails to pay these sums prior to the expiration of this 15-day period, Buyer shall be in default of the Land Contract. Upon such a default, Seller may exercise any remedies permitted by the Land Contract in the case of default without further notice or demand on Buyer. In the event that Seller permits Buyer to transfer any interest in the Premises or this Land Contract, Buyer shall remain primarily liable for all obligations under this Land Contract as if no such transfer had taken place.

\_\_\_\_\_, 201\_\_

Seller:

\_\_\_\_\_  
\_\_\_\_\_

State of \_\_\_\_\_ }  
  } ss.  
County of \_\_\_\_\_ }

Acknowledged before me, a notary public, on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_, County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_, 201\_\_

Buyer:

\_\_\_\_\_

\_\_\_\_\_  
State of \_\_\_\_\_ }  
                                  } ss.  
County of \_\_\_\_\_ }

Acknowledged before me, a notary public, on the \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Drafted by and after recording return to:  
William M. Schlecte, Esq.  
116 N. Fourth Ave., Ste. 100  
Ann Arbor, MI 48104

**Appendix 2**  
**Memo of Land Contract Form**

**MEMORANDUM OF LAND CONTRACT**

\_\_\_\_\_, a \_\_\_\_\_ ("Seller"), whose address is \_\_\_\_\_ a  
\_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"), whose  
address is \_\_\_\_\_, execute this Memorandum of Land Contract to give  
notice of the Land Contract entered into by them in which Seller is selling premises in the \_\_\_\_\_,  
\_\_\_\_\_ County, Michigan, described as:

See attached Exhibit A

Tax Identification No. \_\_\_\_\_  
Commonly known as \_\_\_\_\_

The term of the Land Contract, unless terminated earlier in accordance with its terms, ends on \_\_\_\_\_,  
(subject to the right of Buyer to extend the Land Contract for \_\_\_\_ additional one year terms upon  
compliance with the provisions applicable to such extensions).

\_\_\_\_\_  
(Seller) \_\_\_\_\_  
(Buyer)

State of Michigan, County of \_\_\_\_\_ } ss.

The foregoing Memorandum was signed on \_\_\_\_\_ by \_\_\_\_\_ and  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan  
My commission expires: \_\_\_\_\_

Drafted by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



### Appendix 3

#### Deed Pursuant to Land Contract

#### WARRANTY DEED PURSUANT TO LAND CONTRACT

\_\_\_\_\_, a \_\_\_\_\_ (“Grantor”), whose address is \_\_\_\_\_,  
\_\_\_\_\_ conveys and warrants to \_\_\_\_\_, a \_\_\_\_\_ (“Grantee”),  
whose address is \_\_\_\_\_, the real property located in the \_\_\_\_\_ of  
\_\_\_\_\_, \_\_\_\_\_ County, Michigan, described as:

See attached Exhibit A

Tax Identification No. \_\_\_\_\_  
Commonly known as \_\_\_\_\_

together with all improvements, tenements, hereditaments, appurtenances, and rights of way incident to the property, for the full consideration of \_\_\_\_\_ (\$ \_\_\_\_\_), subject to easements and restrictions, if any, all zoning ordinances, and to all acts and omissions of person other than Grantor from and after \_\_\_\_\_, that being the date of a certain Land Contract pursuant to which this deed is given.

Grantor grants to the Grantees the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended. This property may be located within the vicinity of farm land or farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

\_\_\_\_\_  
(Grantor)

State of Michigan, County of \_\_\_\_\_ } ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

Drafted by: \_\_\_\_\_

After recording return to and send future tax bills to:

\_\_\_\_\_  
Recording Fee: \_\_\_\_\_

Transfer Tax: \_\_\_\_\_



## Appendix 4 Escrow Agreement

This Escrow Agreement is made effective on \_\_\_\_\_, by \_\_\_\_\_  
("Seller"), \_\_\_\_\_ ("Purchaser"), and \_\_\_\_\_ Title Insurance  
Company ("Escrow Agent"), on the following conditions:

1. Seller and Purchaser have entered into a land contract, a copy of which is attached as Exhibit A (the "Land Contract"), for the premises described in the Land Contract (the "Premises").

2. Seller has executed and delivered to Escrow Agent a Deed Pursuant to Land Contract, a copy of which is attached as Exhibit B.

3. Escrow Agent shall hold the deed until it receives notice from Seller, or other proof satisfactory to Escrow Agent, that Seller has received the entire amount due and owing under the Land Contract at which time, Escrow Agent shall deliver the deed to Purchaser or Purchaser's assigns.

4. If Escrow Agent is served with an attested copy of an Order of Eviction issued by a court of competent jurisdiction directing the return of possession of the premises to Seller, a court order by a court of competent jurisdiction directing the delivery of the deed to Purchaser pursuant to this agreement and the Land Contract, or an agreement signed by Seller and Purchaser concerning disposition of the deed, Escrow Agent shall deliver the deed to the designated recipient at the address that recipient directs in writing.

5. Escrow Agent is not responsible for the authenticity of any deed or signature and may rely exclusively on any notice, affidavit, request, consent, instruction, check, or other document that it believes in good faith to be genuine, signed or presented by the proper person, duly authorized, or properly made. Escrow Agent shall be protected when acting on such a belief. Escrow Agent shall have no responsibility except for the performance of its duties as expressly stated in this agreement, and no additional duties shall be inferred or implied under this agreement.

6. \_\_\_\_\_ shall pay Escrow Agent a fee of \$ \_\_\_\_\_ on the effective date of this agreement.

7. No amendment of this agreement or waiver of its terms shall affect the rights or duties of any party unless the party consents to the change in writing.

8. This agreement shall bind the heirs, assigns, and successors of the parties.

\_\_\_\_\_, Seller

\_\_\_\_\_, Seller

\_\_\_\_\_, Purchaser

\_\_\_\_\_, Purchaser

Escrow Agent

By: \_\_\_\_\_

Its: \_\_\_\_\_



## Appendix 5 Notice of Forfeiture

Approved, SCAO

|  |  |                     |
|--|--|---------------------|
| <b>STATE OF MICHIGAN<br/>JUDICIAL DISTRICT</b> | <b>FORFEITURE NOTICE<br/>Land Contract</b> | <b>CASE NO.</b>     |
| Court address                                  |  | Court telephone no. |

1. You are notified that a certain land contract, dated \_\_\_\_\_ between \_\_\_\_\_  
Name(s)  
\_\_\_\_\_ as seller(s) (party[ies] of the first part),  
and \_\_\_\_\_ as purchaser(s) (party[ies] of the second part),  
Name(s)  
concerning the property at \_\_\_\_\_  
Address or legal description of the premises

is in default because of nonpayment of installments of principal and/or interest, and also because of

☐ unpaid taxes.

☐ unpaid insurance premiums.

☐ other:

Explain any other material breach claimed as the basis for forfeiture

2. You have forfeited your rights under the land contract, and payment is demanded by \_\_\_\_\_  
Name  
who holds the land contract as ☐ seller.  
☐ assignee of seller.  
☐ other:

3. The sum of \$ \_\_\_\_\_ is now past due in principal and interest under the land contract, plus the sum of:  
☐ \$ \_\_\_\_\_ for taxes.  
☐ \$ \_\_\_\_\_ for insurance.  
☐ \$ \_\_\_\_\_ other:  
The dates upon which payments were due are \_\_\_\_\_

4. The total amount due, or the material breach(es) of contract, must be cured or paid within \_\_\_\_\_ days\* from the date of the service of notice upon you. (\*15 days, unless the parties have by contract agreed to a longer time.)

5. If the total amount due is not paid in full within the time stated, or if the material breach(es) is/are not cured within the time stated, the land contract will be forfeited, as provided in the contract, and you will be required to move out and give up the described property without further notice to you. **IF YOU DO NOT MOVE OR PAY VOLUNTARILY, THE CONTRACT HOLDER MAY TAKE YOU TO COURT TO EVICT YOU.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

(To be copied, if necessary, to attach to the Complaint)

DC 101 (3/12) **FORFEITURE NOTICE, LAND CONTRACT**

MCL 600.5728, MCL 600.5730

**PROOF OF SERVICE**

I, \_\_\_\_\_ state:

☐ I served the above notice on:

|           |                             |                 |
|-----------|-----------------------------|-----------------|
| Defendant | Complete address of service | Day, date, time |
| Defendant | Complete address of service | Day, date, time |

by ☐ personal service.  
☐ substitute service.  
☐ first-class mail addressed to the defendant's last-known address as defined in MCR 2.107(C)(3).

☐ I could not serve by one of the above methods. Service was made by publication.

\_\_\_\_\_  
Signature

**PROOF OF PUBLICATION**

I, \_\_\_\_\_, state that I am ☐ the publisher  
☐ the agent of the publisher of  
\_\_\_\_\_, a qualified newspaper. Attached is a copy of a notice  
of forfeiture of land contract taken from the newspaper. The dates of publication were:

a. \_\_\_\_\_, b. \_\_\_\_\_, and c. \_\_\_\_\_.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date

Notary public, State of Michigan, County of \_\_\_\_\_

**Appendix 6**  
**Complaint to Foreclose Land Contract**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_,  
Plaintiffs,

-VS-

\_\_\_\_\_,  
Defendant.

\_\_\_\_\_/

\_\_\_\_\_  
**By:**  
**Attorney for Plaintiffs**

\_\_\_\_\_/

**COMPLAINT**

Plaintiffs, by their attorneys, \_\_\_\_\_, a Professional Corporation, for their Complaint against Defendant, \_\_\_\_\_, a Michigan corporation ("Defendant"), state as follows:

1. Plaintiffs are husband and wife maintaining business office in Oakland County, Michigan.
2. Defendant is a Michigan corporation with offices located at \_\_\_\_\_, Michigan
3. This Court has jurisdiction over this matter pursuant to MCL 600.3101.
4. Venue is proper with this Court pursuant to MCL 600.1605.

5. The real estate which is the subject matter of this action is located in \_\_\_\_\_ County, Michigan.

6. On or about December 27, 20\_\_ Plaintiffs entered into a land contract (the "Land Contract") which was duly executed and acknowledged, a copy of which is attached as Exhibit "A" and incorporated by this reference.

7. Under the terms of the Land Contract Plaintiffs agreed to sell and Defendant agreed to buy certain parcels of real estate commonly known as \_\_\_\_\_, Michigan (the "Property") and which are more fully described in Exhibit "B", attached and incorporated by this reference.

8. It was further agreed in the Land Contract that Defendant would pay to Plaintiffs the sum of \$\_\_\_\_\_, of which the down payment of \$\_\_\_\_\_ was to be paid in three (3) installments with \$\_\_\_\_\_ of said down payment being paid at closing, \$\_\_\_\_\_ within thirty (30) days of the contract date and \$\_\_\_\_\_ within \_\_\_\_ months of the contract date; it was further agreed that the balance of \$\_\_\_\_\_ was to be paid by Defendant, paying the sum of \$\_\_\_\_\_ per month commencing \_\_\_\_\_, 20\_\_, and continuing on the first day of each month thereafter until \_\_\_\_\_, 20\_\_, when the entire unpaid principal and interest was due and payable in full. The payments were to be made at Plaintiffs' business offices in \_\_\_\_\_ County, Michigan, from which interest on the unpaid balance at the rate of \_\_\_\_\_ percent per annum from \_\_\_\_\_, 20\_\_ was to be deducted first with the balance, if any, to be applied against principal.

9. Defendant has made certain payments on the Land Contract but has refused to make the payments due under said contract from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_ and, as a result, Defendant is now in default under the terms of the Land Contract.

10. Defendant has failed to pay real estate taxes upon the Property as they became due and as required under the Land Contract and Defendant is now delinquent in the payment of such taxes. This constitutes waste and is a further default of the terms of the Land Contract.

11. Defendant has failed to deliver a policy of insurance against loss and damage to the Property to Plaintiffs and, upon information and belief, Defendant has failed to keep the Property insured against such loss and damage. This constitutes waste and is a further default of the terms of the Land Contract.

12. Defendant has failed to correct the above stated defaults and has remained in default for a period in excess of forty-five (45) days.

13. The filing of this action constitutes a declaration by Plaintiffs that they have exercised their option to accelerate the unpaid balance on the Land Contract pursuant to its terms, in that Plaintiffs declare the entire unpaid balance of the Land Contract to be due and payable immediately.

14. Plaintiffs know of no person not a party to this action who has or claims to have an interest in the Property.

15. Plaintiffs have duly performed all of the conditions and terms of the Land Contract on their part to be performed.

16. No proceedings have been had for the recovery of the debt, or, any part thereof, secured by said Land Contract.

17. Defendant has claimed some interest in the Property, as purchaser or otherwise. WHEREFORE, Plaintiff requests as follows:

(a) That the Court enter judgment in favor of Plaintiffs and against Defendant for foreclosure of said Land Contract and the sale of the Property to satisfy the obligation of said Land Contract including any taxes, plus costs and attorneys fees.

(b) That if upon a sale of the Property a sufficient sum therefore is not realized that Plaintiffs have a judgment against Defendant for the deficiency.

(c) That Plaintiffs may have such other and further relief as shall be agreeable to equity and in good conscience.

Respectfully submitted,

By: \_\_\_\_\_

Attorney for Plaintiff

Dated:

Original - Court  
1st copy - Defendant  
2nd copy - Plaintiff

|  |  |          |
|--|--|----------|
| STATE OF MICHIGAN<br>JUDICIAL DISTRICT | COMPLAINT FOR POSSESSION<br>AFTER LAND CONTRACT FORFEITURE | CASE NO. |
|--|--|----------|

**Court telephone no.**

|   |          |                                   |
|---|----------|-----------------------------------|
| Plaintiff name(s), address(es), and telephone no(s).      | <b>v</b> | Defendant name(s) and address(es) |
| Plaintiff's attorney, bar no., address, and telephone no. |          |                                   |

1. Attached to this complaint is a copy of the land contract and a copy of the forfeiture notice showing when and how it was served.

3. The plaintiff has a right to recover possession of the property for ☐ a. **nonpayment of money** required to be paid under the contract:

☐ b. **material breach of contract** in violation of the terms of the contract as follows:  
Explain. (If a money award is being sought for damages, complete the supplemental complaint below.)

- The action ☐ remains ☐ is no longer pending.

☐ 8. (If applicable.) Complaint is made and judgment is sought for money damages against the defendant as follows: (Specify damages pursuant to MCL 600.5739.)

---

Plaintiff/Attorney signature

MCL 600.5726, MCL 600.5739,  
MCR 2.113(C), MCR 4.202(D)



Approved, SCAO

|  |  |          |
|--|--|----------|
| STATE OF MICHIGAN<br>JUDICIAL DISTRICT | JUDGMENT OF POSSESSION<br>AFTER LAND CONTRACT FORFEITURE | CASE NO. |
|--|--|----------|

**Court address**

Court telephone no.

|           |          |           |
|-----------|----------|-----------|
| Plaintiff | <b>v</b> | Defendant |
|-----------|----------|-----------|

|  |
|--|
|  |
|--|

Plaintiff/Attorney

☐ Personal service

Defendant/Attorney

☐ Personal service

**THE COURT FINDS:**

by ☐ hearing ☐ default\* ☐ consent\*\*

\*For a defendant on active military duty, default judgment shall not be entered except as provided by the Servicemembers Civil Relief Act.

1. The land contract has been forfeited.
- ☐ 2. The plaintiff has a right to possession.
3. There is now due to plaintiff:

|               |    |      |
|---------------|----|------|
| Amount        | \$ |      |
| Other damages | \$ |      |
| Costs         | \$ |      |
| Total         | \$ | 0.00 |

- ☐ 4. There is no cause for action.

**TO THE DEFENDANT, IT IS ORDERED:**

5. A judgment of possession for breach of a land contract is entered in this case for the following described property:

6. To retain possession, defendant must

- ☐ a. pay plaintiff \$\_\_\_\_\_ by \_\_\_\_\_ or an order of eviction may be issued.

Defendant owes \$ \_\_\_\_\_, including interest paid to \_\_\_\_\_. Defendant has \_\_\_\_\_ days from  
Date  
the date of delivery/mailing of this judgment to pay.

- ☐ b. cure the breach by \_\_\_\_\_ .  
Date

If the defendant does not pay the amount owed and/or cure the breach by the date stated, an order of eviction may be issued.

- ☐ 7. A money judgment for damages pursuant to MCL 600.5739 is awarded in the amount of \$ \_\_\_\_\_.

**8. FURTHER ORDERS:**

9. **YOU ARE ADVISED** that you may file a motion for a new trial, a motion to set aside a default judgment, or an appeal and appeal bond within 10 days of judgment. This must comply with all court rules and must be filed in court by \_\_\_\_\_ Date \_\_\_\_\_  
You may want legal help.

Date \_\_\_\_\_

Judge

Bar no.

Payment in the full amount may be made to the plaintiff or to the court by certified check or money order.

|  |   |
|--|---|
| <p><b>CERTIFICATE OF MAILING:</b> I certify that on this date I served a copy of this judgment on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).</p> <p>Date _____ Deputy clerk _____</p> | <p><b>**Approved:</b></p> <p>Date _____ Plaintiff/Attorney _____</p> <p>Date _____ Defendant/Attorney _____</p> |
|--|---|



## Appendix 9 Application and Order for Eviction

|  |  |   |
|--|--|---|
| Approved, SCAO                                 |  | Original - Officer return<br>1st copy - Court<br>2nd copy - Defendant<br>3rd copy - Plaintiff |
| <b>STATE OF MICHIGAN<br/>JUDICIAL DISTRICT</b> | <b>APPLICATION AND ORDER OF EVICTION<br/>Landlord-Tenant / Land Contract</b> | <b>CASE NO.</b>   |
| Court address                                  |  | Court telephone no.   |

|   |   |                                   |
|---|---|-----------------------------------|
| Plaintiff name, address, and telephone no.                | v | Defendant name(s) and address(es) |
| Plaintiff's attorney, bar no., address, and telephone no. |   |                                   |

**NOTE:** An application may be required even though a request for an order of eviction is granted in the judgment.

### APPLICATION

1. On \_\_\_\_\_ judgment was entered against the defendant(s) and the plaintiff was awarded  
Date  
possession of the following described property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. No payment has been made on the judgment or no rent has been received since the date of judgment, except the sum of  
\$ \_\_\_\_\_ received under the following conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. The plaintiff has complied with the terms of the judgment.
4. The time stated in the judgment before an order of eviction can be issued has elapsed.

I declare that the statements above are true to the best of my information, knowledge, and belief.

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Plaintiff/Attorney signature

### ORDER OF EVICTION

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:**

**To the Court Officer:** You are ordered to restore the plaintiff to, and put the plaintiff in, full possession of the premises.

\_\_\_\_\_  
Date issued  
SEAL  
\_\_\_\_\_  
Judge  
\_\_\_\_\_  
Bar no.

**NOTE:** In tenancy cases, this order must be served within 56 days of the issuance date.

DC 107 (1/12) **APPLICATION AND ORDER OF EVICTION, Landlord-Tenant / Land Contract**

MCL 600.5744, MCR 4.201(L),  
MCR 4.202(K)

*Land Contracts: Dealing with Common Issues, August 28, 2012*

**RETURN**

I certify and return that on \_\_\_\_\_ I executed the order of eviction on the reverse side of this form  
Date

by evicting \_\_\_\_\_  
Name(s)

from the property, and I have restored the plaintiff to peaceful possession as ordered.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Deputy) sheriff/Court officer/Bailiff

|                       |                |     |                  |
|-----------------------|----------------|-----|------------------|
| Service fee           | Miles traveled | Fee |                  |
| \$                    |                | \$  |                  |
| Incorrect address fee | Miles traveled | Fee | <b>TOTAL FEE</b> |
| \$                    |                | \$  | \$               |