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▶ **Section Links**

- [Real Property Website](#)
- [Officers and Council](#)
- [Real Property Review](#)
- [Review Cumulative Index](#)
- [Land Title Standards](#)
- [Listserv](#)

- [SBM Website](#)
- [Calendar of Events](#)
- Public Policy Updates  
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▶ **Electronic Recording—Zap It to Me**

*By Metta J. Dwyer, Esq., Warner, Norcross & Judd LLP*

On July 1, 2010, the Michigan Senate passed House Substitute H-1 for [SB 791](#), which creates the Uniform Real Property Electronic Recording Act (“Act”). The Act enables county registers to accept electronic documents for recording. The Act also gives electronic signatures the same legal effect as original signatures. In addition, documents requiring a notary’s signature will be valid if the notary’s electronic signature is attached. No electronic seal will be required.

Effective January 1, 2011, the Act creates the Electronic Recording Commission (“ERC”) to adopt standards for the electronic recording of documents. The Act does not invalidate documents electronically recorded prior to the adoption of ERC standards or to the passage of another law permitting electronic recording.

The Act does not require county registers to accept electronic documents. However, it does require county registers who accept electronic documents to comply with standards adopted by the ERC *and* to continue to accept paper documents. Registers must place entries for electronic and paper documents in the same index.

Practice Tips:

- Once the ERC establishes standards, make sure that all electronically recorded documents comply. This is particularly important in jurisdictions that recorded electronic documents before the ERC established standards. Standards and methods used prior to the issuance of ERC standards may no longer be applicable.
- If a jurisdiction allows electronic recording 24 hours a day, 7 days a week, recorded documents submitted after business hours may not show up on an electronic search until the following business day. Until this potential issue is addressed, do not rely on electronic record searches performed outside of regular business hours.

▶ **Use Restrictions: A Gift That Keeps on Giving and Giving**

*By Gregory J. Gamalski, Esq. and Jason A. Switzer, Esq., Giarmarco, Mullins & Horton, P.C.*

Real estate ownership today is almost always subject to use restrictions of one sort or another. Most often the restrictions are deemed beneficial to the property, preserving value by assuring desirable uses are encouraged and undesirable uses are controlled. However, out-of-date restrictions pose a problem as real estate use and technology evolve. For instance, urban farming faces subdivision restrictions limiting use to “single family purposes” and precluding goats, chickens, bee hives, and compost piles. Newer restrictions on appearance make incorporating emerging technologies like solar panels, small scale windmills, and communication arrays into existing buildings problematic. Older documents at best provided awkward amendment procedures where a window opens for amendment every 10 years or 25 years, without guidance about how the amendment mechanism works. One recent case illustrates. In [Brown v. Martin](#), Mich. Ct. App. No. 289030, 2010 Mich App Lexis 1070 (June 15, 2010), restrictions lasted for 25 years and then automatically renewed for rolling 10-year periods. Six months into the first 10-year period, the lot owners amended the restrictions. The Court of Appeals ruled that the amendment only became effective at the end of the current 10-year period, 35 years after the original recording. Thus, the amendment rights have little current effect. That situation makes one look at the FCC’s Over-the-Air Reception Devices (“OTARD”) rule (47 C.F.R. §1.4000) a bit more kindly. The OTARD rule largely abrogated in any practical sense restrictions that limit the property owners’ and occupants’ ability to install cable and satellite communications equipment. Can similar treatments for solar panels and residential wind power equipment be far behind? Should they be?

▶ **Historic Plat Interpretation**

*By James Y. Stewart, Esq., Kotz, Sangster, Wysocki and Berg, P.C.*

In [Haigh v. Storey](#) (Mich. Ct. App. No. 291120, June 17, 2010, unpublished) plaintiffs claimed defendants’ fence and dock narrowed a public lake access easement. Although the plat,

## Property Interests and Non-Marital Relationships

By Sandra D. Glazier, Esq., Lipson, Neilson, Cole, Seltzer & Garin, P.C.

[Williams v. Hartley](#), (unpublished Michigan Court of Appeals No. 290046, May 11, 2010) reminds us of the potential pitfalls associated with co-habitation relationships and one party's ability to claim entitlement, reimbursement, or compensation for contributions to the other party's property interests.

The Michigan legislature eliminated common law marriage in 1957. The equitable and/or statutory benefits available upon dissolution of a marriage generally aren't available if partners started living together after 1957. In such relationships, property rights generally premised upon title and/or contract terms will prevail. Even if couples subsequently wed, pre-marital property may not be subject to division or invasion unless one of two statutory exceptions is met. See [Korth v. Korth](#), 256 Mich App 286 (2003).

Generally, services rendered during such a relationship are considered gratuitous and not compensable to the non-property contributor under either *quantum meruit* or unjust enrichment, unless a contract "in fact" exists. See [Williams v. Hartley](#), *above*; also [Featherston v. Steinhoff](#), 226 Mich App 584 (1997) and [Roznowski v. Bozyk](#), 73 Mich App 405 (1977). The Court of Appeals has held even services provided to a spouse's parents' home while the parties were married and in which neither party held a property interest to be gratuitous and not subject to division. See [Panetta v. Panetta](#) (unpublished Michigan Court of Appeals No. 247939, October 21, 2004).

Parties in live-in relationships who intend to confer property interests and/or receive reimbursement or compensation should memorialize their intentions in a contract such as a service contract, cohabitation agreement, or a pre- or postnuptial agreement). In drafting, remember to conform to general contract principles including adequate consideration. Without a written agreement, the title holder can consider a specific device (either outright or in trust).

dedicated in 1920, referenced certain lots extending to the water's edge, the plat was silent on whether the streets extended to the water's edge. In granting defendants' motion for summary disposition, the trial court concluded based on the plat itself that the street in question terminated pursuant to the plat.

On appeal, the Court of Appeals held that the plat was not required to identify the specific street boundaries according to the plat statute in effect in 1920 (1915 CL 3551; 1915 PA 251 § 2). The Court also considered a later amendment (1948 CL 560.5; 1931 PA 319 § 5) and concluded that, while the amendment was not controlling, there was a reasonable inference that the perimeter drawn on the plat was merely an "intermediate traverse" rather than an actual boundary. The Court also held that the dotted plat lines at the intersections of the streets and waterfront created an inference that the streets extended to the water's edge. Because there were insufficient facts to determine whether the plat notation meant the streets terminated before the water's edge, the Court remanded the case to determine whether the contemporary statute creates a reasonable factual inference, or for the presentation of additional evidence on the scope of the public use dedication.

There is often more to reviewing an old plat than reviewing its four corners, particularly when the plat involves waterfront property. This court panel looked to plat statute amendments enacted over 10 years after the recording of the original plat to possibly justify the drawing and drafting of the plat.