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“Squatters” Rights in Detroit: A Legal Analysis

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I. INTRODUCTION

There is concern within the City of Detroit over “squatters” and what concerned neighbors and community organizations can do about them. It is noteworthy that the term “squatter” is a legal misnomer. Generally, “squatters” fall into two (2) categories. “Squatters” are considered: (1) people who occupy what would otherwise be vacant or abandoned homes without the permission of the owner and (2) people who once had a legal right to occupy a home, but subsequently lost that right by defaulting on their mortgage or lease.¹ These two types of “squatters” are discussed in Section II and Section III respectively.

Two common questions often arise: (1) what rights, if any, do “squatters” have to occupy these homes and (2) what legal action, if any, may be taken against “squatters”? Answering these questions depends on the squatter’s relationship with the property and whether the party seeking to remove the squatter has the ability to do so under the law.

¹ This second category is distinguishable from a “holdover tenant” which is a relationship created after the expiration of a lease whereby the landlord and tenant voluntarily continue the relationship and the default terms are on a month-to-month basis.

II. “SQUATTER” AS A TRESPASSER

What is a “squatter”?

A “squatter” is another term for a trespasser.² A squatter is one who possesses property without right or title.³ One way in which individuals “squat” is by taking up residence in vacant or abandoned property.

What are “squatter’s rights”?

Individuals that are squatting may claim they have “squatter’s rights” to the property. “Squatter’s rights” is a colloquialism for the legal doctrine known as adverse possession.⁴ A squatter does not have any legal interest in a property just because they have possession. However, if a squatter maintains possession under certain circumstances and for a prescribed length of time, they may gain title to the property. This is known as adverse possession. In order for a squatter to gain title under the doctrine of adverse possession they must openly live in a property as if they own it for an uninterrupted period of fifteen (15) years.⁵ Because adverse possession, if proven, vests the squatter with title and extinguishes the rights of the former owner, courts strictly construe the requirements and require a high level of proof.⁶ Most individuals squatting in vacant or abandoned homes will not be able to assert “squatter’s rights.”

How can a “squatter” be removed from a property?

Although a squatter ordinarily does not have legal right or title to the property, the law forbids a citizen from removing the squatter by force. Instead, there are two possible legal

² *Heilwig v. Nybeck*, 179 Mich. 292, 297-298, 146 N.W. 141 (Mich. 1914).

³ *Grand Rapids Trust Co. v. Doctor*, 222 Mich. 248, 254, 192 N.W. 641 (Mich. 1923).

⁴ *Rink v. Ratcliff*, No. 265517, 2006 Mich. App. LEXIS 806, * 3-4 (Mich. App. 2006) (citing *Lawson v. Bishop*, 212 Mich. 691, 699, 180 N.W. 596 (Mich. 1920)).

⁵ *Mackinac Island Development Company, Ltd. v. Burton Abstract and Title Co.*, 132 Mich. App. 504, 512, 349 N.W.2d 191 (Mich. App. 1984) (“In order to secure title by adverse possession, the claimant’s possession must be actual, visible, open, notorious, exclusive, continuous, uninterrupted for the statutory period and under color or claim of right...[a]cts of ownership which openly and publicly indicate an assumed control or use consistent with the character of the premises are sufficient.”).

⁶ *Id.*

means to remove someone who is residing on a property unlawfully. First, the squatter is guilty of criminal trespass if they enter property after they have been told not to by the owner, responsible party, or occupant, or if they remain on the property after they have been told to leave by the owner, responsible party, or occupant of the property.⁷ In this instance, the squatter can be removed by the local police and charged with a misdemeanor.

Second, if the police are unwilling to remove the squatter, a civil action may be filed. The action may only be brought by the owner of the property or an occupant.⁸ Once an action is filed, the person bringing the action must prove they have a superior right or title to the property and the squatter must be served with a civil complaint.⁹ Assuming the squatter cannot prove they have an interest, such as through adverse possession, the owner or occupant can ask the court for a writ of restitution that allows the squatter to be evicted by the sheriff or authorized officer.¹⁰ The owner or occupant should not attempt to remove the squatter themselves because the law disfavors self-help evictions and often the evictor can be sued.¹¹

III. “SQUATTER” AS A MORTGAGE HOLDOVER

A. Overview of Foreclosure Process

This section deals with people who once had a legal right to occupy a home, but subsequently lost that right by defaulting on their mortgage, thereby turning into a mortgage holdover or “squatter”. In order to understand how and when a mortgage holdover may be removed from a foreclosed home, it is necessary to have a basic understanding of Michigan’s foreclosure law. The foreclosure process in Michigan is a heavily regulated statutory process.

⁷ Mich. Comp. Laws § 750.552.

⁸ Mich. Comp. Laws §600.2932(1).

⁹ *Malloy v. Pearson*, No. 222597, 2001 Mich. App. LEXIS 294, *3 (Mich. App. 2001).

¹⁰ Mich. Comp. Laws §600.5744.

¹¹ *Deroshia v. Union Terminal Piers*, 151 Mich. App. 715, 718-719, 391 N.W.2d 458 (Mich. App. 1986) (citing Mich. Comp. Laws §600.2918)).

1. Default

The foreclosure process begins when a mortgagor, also referred to as a borrower, fails to pay their monthly mortgage payment. At first, the mortgagee, or lender, provides the borrower with a notice of default, and provides them with a period of time in which to make-up or cure their missed payments. However, if enough time passes and the borrower fails to make-up the missing payments, the lender will initiate foreclosure proceedings.

2. Foreclosure

Generally, foreclosure proceedings can be initiated in two ways, either by judicial sale or sale by advertisement. While the procedures for both a judicial sale and sale by advertisement are different, when done properly, both result in a sheriff's sale of the property. The most common method of mortgage foreclosure in Michigan is by advertisement.

a. Sheriff's Sale

Sheriff's sales are weekly public auctions where anyone is able to attend and purchase foreclosed homes. The highest bidder at a sheriff's sale, which is often the lender, will receive a sheriff's deed. This deed lists the details of the foreclosure, including the legal description of the premises, the parties, the buyer's name, the amount bid, and the redemption period. This deed makes the successful bidder the "owner" of the foreclosed property, subject to statutory redemption.

b. Statutory Redemption Period

Borrowers are permitted a period of time to redeem their property following a sheriff's sale.¹² This period of time varies depending on the method of foreclosure and other factors including the size of the property, number of dwellings on the property, and whether the property is abandoned. Under the law, the new "owner" or the highest bidder at the sheriff's sale, is not the true owner of a foreclosed property until after the statutory redemption period has expired. At any time after the sheriff's sale and within the statutory redemption period the borrower can redeem his or her property by paying the auction price paid by the new "owner," plus any and all taxes, fees and interest, and regain ownership of the property. Statutory redemption is generally

¹² MCL 600.3140; MCL 600.3240.

six (6) months for a homeowner in Michigan. However, if abandonment can be proven, the period can be shortened to thirty (30) days.

B. Removing a “Mortgage Holdover”

After the mortgage has been foreclosed and the borrower remains in the home, they are a “mortgage holdover.” The ability to evict a mortgage holdover is dependent upon whether the statutory redemption period has expired. Michigan’s eviction statute allows a party to maintain a legal proceeding for possession against a mortgage holdover only after the expiration of the statutory redemption period.¹³ Once the redemption period has run, a party with a legal right in the property may file a civil action to recover possession.

A third party, however, may not file an action for possession or eviction unless the new “owner” deeds or assigns the property to the third party.¹⁴ This is because MCL 600.5714 requires a party to have a “legal” right in the property before filing a suit against a “mortgage holdover.”¹⁵ Therefore, the only way for neighbors or community groups to have standing to file a court action against a “mortgage holdover” would be to have the new “owner”, often the bank, deed or assign the property to them, thereby allowing the third party to maintain a legal action for possession or eviction pursuant to MCL 600.5714.

While deeding or assigning a bank’s rights to a third party is an option, convincing the bank to agree to this course of action is unlikely. Banks are unlikely to deed or assign its right to a third party because the bank would be exposing itself to potential liability for any torts committed by the third party in the eviction process. Put simply, a bank would rather avoid such liability and conduct its own eviction proceedings if it considered eviction necessary to protect the property.

¹³ *Kubczak v. Chemical Bank & Trust Co.*, 456 Mich 653 (1998); MCL 600.5714(f).

¹⁴ See MCR 2.201; *Guardian Depositors’ Corp. v. Keller*, 286 Mich. 403 (1938).

¹⁵ See MCR 2.201; *Guardian Depositors’ Corp. v. Keller*, 286 Mich. 403 (1938).

IV. CONCLUSION

While third parties, such as neighbors or community organizations, do not have the right to bring a civil action to evict squatters or mortgage holdovers, that does not mean that they have no means to protect the neighborhood. It is unlawful for an individual to enter on the property of another without authority after having been forbidden to enter or notified to leave by the owner or occupant or agent of the owner or occupant. Thus, a neighbor could get in touch with the actual owner of the property to discuss potential actions to take against a squatter. If the owner of the property is unknown, a neighbor may go to the Wayne County Register of Deeds to find out who is the owner of record. One potential action to take against the squatter is for the neighbor, after receiving permission from the owner, to post “No Trespassing” signs on the property. Thereafter, if a squatter remains on the property, the neighbor could call the police and report a criminal trespass. Similarly, a neighbor may contact the police to report a home invasion if he or she witnesses a squatter stealing, vandalizing or committing drug offenses in the home. Finally, another indicator of squatting could be illegal utility connections, so notification to the appropriate utility company may be another course of action.

Another possibility is for a neighbor to contact the owner of the property and see if they will deed or assign the property to them, and thereby acquire a legal interest in the land. The neighbor would then be able to maintain a legal action to have the squatter evicted.

For more information on what you can do, visit Community Legal Resources’ vacant property toolbox and legal manual, available at www.clronline.org.

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