

CHAPTER 558

CONVEYANCES

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558.1 "Instruments affecting real estate" defined — revocation.

All instruments containing a power to convey, or in any manner relating to real estate, including certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and a jobs training agreement entered into under chapter 260E or 260F between an employer and community college which contains a description of the real estate affected, shall be held to be instruments affecting the same; and no such instrument, when acknowledged or certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which

the instrument containing such power is recorded, except that uniform commercial code financing statements and financing statement changes as provided in chapter 554 need not be thus acknowledged.

[C51, §1226; R60, §2234; C73, §1969; C97, §2957; C24, 27, 31, 35, 39, §10066; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.1]

93 Acts, ch 180, §90; 2005 Acts, ch 3, §96

558.1A Repealed by 2003 Acts, ch 44, § 113.

558.1B Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. “Grantee” means the name of the transferee in the transaction used to create the recording index. For other instruments affecting real estate, “grantee” includes but is not limited to a buyer, mortgagee, lender, assignee, lessee, or party to an affidavit who is not the affiant.

3. “Grantor” means the name of the transferor in the transaction used to create the recording index. For other instruments affecting real estate, “grantor” includes but is not limited to a seller, mortgagor, borrower, assignor, lessor, or affiant.

2000 Acts, ch 1148, §1; 2010 Acts, ch 1023, §1

558.2 Corporation having seal.

In the execution of any written instrument conveying, encumbering, or affecting real estate by a corporation that has adopted a corporate seal, the seal of such corporation may but need not be attached or affixed to such written instrument.

[C51, §974; R60, §1823; C73, §2112; C97, §3068; S13, §3068; C24, 27, 31, 35, 39, §10067; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.2]

96 Acts, ch 1154, §1

[P] Seals generally, §537A.1

558.3 Corporation not having seal.

If the corporation has not adopted a corporate seal, such fact may but need not be stated in such written instrument.

[S13, §3068; C24, 27, 31, 35, 39, §10068; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.3]

96 Acts, ch 1154, §2

558.4 Repealed by 73 Acts, ch 279, § 1.

558.5 Contract for deed — presumption of abandonment.

When the record shows that a contract or bond for a deed has been executed more than ten years earlier, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, the contract shall be deemed abandoned and of no effect and the land shall be freed from any lien or defect on account of the contract.

On and after July 1, 1992, this section shall apply to a contract or bond described in this section, if the contract or bond is not filed of record but referred to in another instrument which is filed of record. The contract or bond shall be deemed abandoned ten years from the date that the contract or bond is to be performed according to the recorded instrument. However, if the recorded instrument does not refer to a performance date for the contract or bond, the contract or bond shall be deemed abandoned ten years after the date that the instrument containing the reference is recorded.

[S13, §2963-j; C24, 27, 31, 35, 39, §10070; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.5]

91 Acts, ch 183, §8

558.6 Given names — variation — effect.

When there is a difference between the given names or initials in which title is taken, and the given names or initials of the grantor in a succeeding conveyance, and the surnames in both instances are written the same or sound the same, the conveyances or the record of them is presumptive evidence that the surname in the several conveyances and instruments refers to the same person.

[S13, §2963-k; C24, 27, 31, 35, 39, §10071; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.6]

84 Acts, ch 1067, §46

558.7 Assignment of certificate of entry deemed deed.

When the record shows:

1. That the original entry, certificate of entry, receipt, or duplicate thereof has been assigned;
2. That prior or subsequent to such assignment, the United States or state issued a patent or conveyance to the assignor;
3. That no deed of conveyance appears on record from the person who made the original entry or assignor to the assignee; and
4. That the present record owner holds title under such assignment; such assignment shall have the same force and effect as a deed of conveyance and shall be conclusively presumed to carry all right, title, and interest of the patentee of said real estate, the same as though a deed of conveyance had been subsequently executed by the patentee or assignor to a subsequent grantor.

[S13, §2963-n; C24, 27, 31, 35, 39, §10072; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.7]

558.8 Affidavits explanatory of title — presumption.

Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file such affidavit. Such affidavit or the record thereof, including all such affidavits now of record, shall raise a presumption from the date of recording that the purported facts stated therein are true; after the lapse of three years from the date of such recording, such presumption shall be conclusive.

[C51, §1226; R60, §2234; C73, §1969; C97, §2957; S13, §2963-i; C24, 27, 31, 35, 39, §10073; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.8]

558.9 Railroad land grants — duty to record.

Every railroad company which owns or claims real estate in this state, granted by the government of the United States or this state to aid in the construction of its railroad, where it has not already done so, shall place on file and cause to be recorded, in each county wherein the real estate granted is situated, evidence of its title or claim of title, whether the same consists of patents from the United States, certificates from the secretary of the interior, or governor of this state, or the proper land office of the United States or this state. Where no patent was issued, reference shall be made in said certificate to the Acts of Congress, and the acts of the legislature of this state, granting such lands, giving the date thereof, and date of their approval under which claim of title is made.

[C97, §2939; C24, 27, 31, 35, 39, §10074; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.9]

558.10 Patents covering land in different counties.

Where the certificate of the secretary of the interior or the patents cover real estate situated in more than one county, the secretary of state shall, upon the application of any railroad company or its grantee, prepare and furnish, to be recorded, a list of all the real estate situated in any one county so granted, patented, or certified; and all such evidences of title shall be entered by the auditor upon the index, transfer, and plat books.

[C97, §2939; C24, 27, 31, 35, 39, §10075; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.10]

558.11 Record — constructive notice.

The evidence of title shall be filed with the recorder of deeds of the county in which the real estate is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in other cases of entries upon said index, and the recorder shall receive the same fees therefor as for recording other instruments.

[C97, §2940; C24, 27, 31, 35, 39, §10076; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.11]

[P] Fees, §331.604

558.12 Transcript of instruments.

A person interested in a parcel of real estate may procure from a county recorder in this state a transcript of any instrument affecting real estate which is of record in that recorder's office. The transcript shall be certified by the recorder.

[S13, §2938-a; C24, 27, 31, 35, 39, §10077; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.12]

90 Acts, ch 1081, §2

558.13 Transcript recorded.

A transcript of the record of any instrument affecting real estate, certified as provided in section 558.12, shall be entitled to record in the office of the recorder of any other county in which is situated any of the real estate affected by such instrument. The effect of the recording of transcript shall be the same as the recording of the original instrument.

[S13, §2938-a; C24, 27, 31, 35, 39, §10078; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.13]

558.14 Grantor described as “spouse” or “heir” — presumption.

All conveyances or the record title thereof of real estate executed more than ten years earlier, wherein the grantor or grantors described themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated.

[S13, §2963-e; C24, 27, 31, 35, 39, §10079; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.14]

91 Acts, ch 183, §9

558.15 Notarial stamps or seals of nonresidents — presumption.

Any notarial stamp or seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima facie evidence that the words thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made.

[S13, §2943-a; C24, 27, 31, 35, 39, §10080; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.15]

2001 Acts, ch 38, §6; 2001 Acts, ch 176, §45, 46

558.16 and 558.17 Repealed by 81 Acts, ch 117, § 1097.**558.18 Certification — effect.**

When any such records are copied, the officer to whose office the original records belong shall compare the copy so made with the original, and when found correct, shall attach the officer's certificate in each volume or book of such copied records, to the effect that the officer

has compared such copies with the original and they are true and correct, and such copied records shall thereupon have the same force and effect in all respects as the original records.

[R60, §2261, 2262; C73, §1974, 1975; C97, §2963; C24, 27, 31, 35, 39, §10083; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.18]

558.19 Forms of conveyance.

The following or other equivalent forms of conveyance, varied to suit circumstances, are sufficient for the purposes herein contemplated:

1. *For a quitclaim deed.*

For the consideration of dollars, I hereby quitclaim to all my interest in the following tract of real estate (describing it).

2. *For a deed in fee simple without warranty.*

For the consideration of dollars, I hereby convey to the following tract of real estate (describing it).

3. *For a deed in fee with warranty.* The same as the last preceding form, adding the words:

And I warrant the title against all persons whomsoever (or other words of warranty, as the party may desire).

4. *For a mortgage.* The same as deed of conveyance, adding the following:

To be void upon condition that I pay, etc.

[C51, §1232; R60, §2240; C73, §1970; C97, §2958; C24, 27, 31, 35, 39, §10084; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.19]

558.20 Acknowledgments.

The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or encumbered, whether made within this state, outside this state, outside the United States, or under federal authority, shall comply with the provisions of chapter 9E.

[C51, §1217; R60, §2226; C73, §1955; C97, §2942; S13, §2942; C24, 27, 31, 35, 39, §10085; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.20]

2004 Acts, ch 1052, §1

[P] Certain acknowledgments legalized, §589.4

558.21 through 558.30 Repealed by 2004 Acts, ch 1052, § 10. See § 558.20.

558.31 Proof of execution and delivery in lieu of acknowledgment.

Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:

1. If the grantor dies before making the acknowledgment.
2. If the grantor's attendance cannot be procured.
3. If, having appeared, the grantor refuses to acknowledge the execution of the instrument.

[C51, §1220, 1221; R60, §2228; C73, §1959; C97, §2949; C24, 27, 31, 35, 39, §10095; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.31]

558.32 Contents of certificate.

The certificate endorsed by the officer upon a deed or other instrument thus proved must state:

1. The title of the officer taking the proof.
2. That it was satisfactorily proved that the grantor was dead, or that for some other reason the grantor's attendance could not be procured in order to make the acknowledgment, or that, having appeared, the grantor refused to acknowledge the same.
3. The name of the witness by whom proof was made, and that it was proved by the witness that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party.

[C51, §1222; R60, §2230; C73, §1960; C97, §2950; C24, 27, 31, 35, 39, §10096; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.32]

558.33 Subpoenas.

An officer having power to take the proof hereinbefore contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county, in the manner provided for the taking of depositions.

[C51, §1225; R60, §2233; C73, §1965; C97, §2956; C24, 27, 31, 35, 39, §10097; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.33]

[P] Attendance of witnesses, §622.102

558.34 Use of seal.

The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the officer making the same usually authenticates the officer's formal acts.

[C51, §1223; R60, §2231; C73, §1961; C97, §2951; C24, 27, 31, 35, 39, §10098; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.34]

558.35 Married persons.

The acknowledgment of a married person, when required by law, may be taken in the same form as if the person were sole, and without any examination separate and apart from the person's spouse.

[C97, §2960; C24, 27, 31, 35, 39, §10099; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.35]

558.36 Attorney in fact.

The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same.

[R60, §2251; C73, §1962; C97, §2952; C24, 27, 31, 35, 39, §10100; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.36]

558.37 through 558.39 Repealed by 2004 Acts, ch 1052, § 10.**558.40 Liability of officer.**

Any officer, who knowingly misstates a material fact in any of the certificates mentioned in this chapter or chapter 9E, shall be liable for all damages caused thereby, and shall be guilty of a serious misdemeanor.

[C51, §1224; R60, §2232; C73, §1964; C97, §2955; C24, 27, 31, 35, 39, §10104; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.40]

2004 Acts, ch 1052, §2

558.41 Recording.

1. *Effect of recording.* An instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice, or against the state or any of its political subdivisions during and after condemnation proceedings against the real

estate, unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter.

2. *Priority.* An interest in real estate evidenced by an instrument so filed shall have priority over any lien that is given equal precedence with ordinary taxes under chapter 260E or 260F, or its successor provisions, except for a lien under chapter 260E or 260F upon the real estate described in an instrument or job training agreement filed in the office of the recorder of the county in which the real estate is located prior to the filing of a conflicting instrument affecting the real estate, and a subordinate lien under chapter 260E or 260F may be divested or discharged by judicial sale or by other available legal remedy notwithstanding any provision to the contrary contained in chapter 260E or 260F, or its successor provisions. Nothing in this section shall abrogate the collection of, or any lien for, unpaid property taxes which have attached to real estate pursuant to chapter 445, including taxes levied against tangible property that is assessed and taxed as real property pursuant to chapter 427A, or the collection of, or any lien for, unpaid taxes for which notice of lien has been properly recorded pursuant to section 422.26.

3. *Prohibitions against recording unenforceable.* A provision contained in a residential real estate installment sales contract which prohibits the recording of the contract, or the recording of a memorandum of the contract, is unenforceable by any party to the contract.

4. *Termination of life estate.* Upon the termination of a life estate interest through the death of the holder of the life estate, any surviving holder or successor in interest shall prepare a change of title or affidavit for tax purposes and shall deliver such instrument to the county recorder of the county in which each parcel of real estate is located.

[C51, §1211; R60, §2220; C73, §1941; C97, §2925; C24, 27, 31, 35, 39, §10105; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.41]

93 Acts, ch 33, §1; 93 Acts, ch 180, §91; 98 Acts, ch 1120, §2; 2004 Acts, ch 1144, §3; 2006 Acts, ch 1031, §7

558.42 Acknowledgment as condition precedent.

A document shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in chapter 9E, except that affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and uniform commercial code financing statements and financing statement changes as provided in chapter 554 need not be thus acknowledged.

[C51, §1212; R60, §2221; C73, §1942; C97, §2926; C24, 27, 31, 35, 39, §10106; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.42]

90 Acts, ch 1205, §60; 91 Acts, ch 211, §12; 2004 Acts, ch 1052, §3; 2005 Acts, ch 3, §97

558.43 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Nonresident alien" means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

d. A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

e. A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

2. The term "beneficial ownership" includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate

directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation or trust.

3. The term “conveyance” means all deeds and all contracts for the conveyance of an estate in real property except those contracts to be fulfilled within six months from date of execution thereof.

4. “Agricultural land” means agricultural land as defined in section 9H.1.

[C79, 81, §558.43]

558.44 Mandatory recordation of conveyances and leases of agricultural land.

Every conveyance or lease of agricultural land, except leases not to exceed five years in duration with renewals, conveyances or leases made by operation of law, and distributions made from estates to heirs or devisees shall be recorded by the grantee or lessee with the county recorder not later than one hundred eighty days after the date of conveyance or lease.

For an instrument of conveyance of agricultural land deposited with an escrow agent, the fact of deposit of that instrument of conveyance with the escrow agent as well as the name and address of the grantor and grantee shall be recorded, by a document executed by the escrow agent, with the county recorder not later than one hundred eighty days from the date of the deposit with the escrow agent. For an instrument of conveyance of agricultural land delivered by an escrow agent, that instrument shall be recorded with the county recorder not later than one hundred eighty days from the date of delivery of the instrument of conveyance by the escrow agent.

At the time of recordation of the conveyance or lease of agricultural land, except a lease not exceeding five years in duration with renewals, conveyances or leases made by operation of law and distributions made from estates of decedents to heirs or devisees, to a nonresident alien as grantee or lessee, such conveyance or lease shall disclose, in an affidavit to be recorded therewith as a precondition to recordation, the name, address, and citizenship of the nonresident alien. In addition, if the nonresident alien is a partnership, limited partnership, corporation or trust, the affidavit shall also disclose the names, addresses, and citizenship of the nonresident alien individuals who are the beneficial owners of such entities. However, any partnership, limited partnership, corporation, or trust which has a class of equity securities registered with the United States securities and exchange commission under section 12 of the Securities Exchange Act of 1934 as amended to January 1, 1978, need only state that fact on the affidavit.

Failure to record a conveyance or lease of agricultural land required to be recorded by this section by the grantee or lessee within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a conveyance or lease of agricultural land presented for recording even though not presented within one hundred eighty days after the date of conveyance or lease. The county recorder shall forward to the county attorney a copy of each such conveyance or lease of agricultural land recorded more than one hundred eighty days from the date of conveyance. The county attorney shall initiate action in the district court to enforce the provisions of this section. Failure to timely record shall not invalidate an otherwise valid conveyance or lease.

If a real estate contract or lease is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or lease or a memorandum of the contract or lease containing at least the names and addresses of all parties named in the contract or lease, a description of all real property and interests therein subject to the contract or lease, the length of the contract or initial term of the lease, and in the case of a lease a statement as to whether any of the named parties have or are subject to renewal rights, and if so, the event or condition upon which renewal occurs, the number of renewal terms and the length of each, and in the case of a real estate contract a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due. This unnumbered paragraph is effective July 1, 1980 for all contracts and leases of agricultural land made on or after July 1, 1980.

The provisions of this section except as otherwise provided, are effective July 1, 1979, for all conveyances and leases of agricultural land made on or after July 1, 1979.

[C79, 81, §558.44]

558.45 Notation of assignment or release on index.

Where any mortgage, contract, or other instrument constituting an encumbrance upon real estate shall be assigned or released by a separate instrument, it shall be the duty of the recorder to make a notation where the instrument was originally indexed, indicating the nature of such assignment or release and a document reference number of the record where the same is recorded.

[C27, 31, 35, §10108-a1; C31, 35, §10115-c1; C39, §10108.1, 10115.1; C46, 50, 54, 58, 62, 66, §558.45, 558.56; C71, 73, 75, 77, 79, 81, §558.45]

2001 Acts, ch 44, §22

558.46 Mandatory recording of certain residential real estate installment sales contracts.

1. Every real estate installment sales contract transferring an interest in residential property shall be recorded by the contract seller with the county recorder in the county in which the real estate is situated not later than ninety days from the date the contract was signed by the contract seller and contract purchaser.

2. Failure to record a real estate contract required to be recorded by this section by the contract seller within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a real estate contract presented for recording even though not presented within ninety days of the signing of the contract. The county recorder shall forward to the county attorney a copy of each real estate contract recorded more than ninety days from the date the contract was signed by the contract seller and contract purchaser. The county attorney shall initiate action in the district court to enforce the provisions of this section. Fines collected pursuant to this subsection shall be deposited in the general fund of the county.

3. Failure to timely record shall not invalidate an otherwise valid real estate contract. However, a contract seller is prohibited from initiating forfeiture proceedings on the basis of a failure to comply with the terms of a real estate contract, if the contract has not been recorded.

4. If a real estate contract is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or a memorandum of the contract containing at least the names and addresses of all parties named in the contract, a description of all real property and interests in the real property subject to the contract, the length of the contract, and a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due.

5. For the purposes of this section, “*residential property*” includes commercial property consisting of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes.

6. This section applies to residential real estate installment sales contracts entered into before, on, or after July 1, 1998. However, such contracts entered into before July 1, 1998, shall not be subject to the fine in subsection 2.

7. If a contract seller is subject to the requirements of section 558.70, the contract must be recorded within thirty days rather than ninety days and the recording requirement is only satisfied by recording the real estate contract rather than a memorandum of the contract.

98 Acts, ch 1120, §1; 2002 Acts, ch 1136, §3, 6; 2010 Acts, ch 1058, §1, 2

[SP] 2010 amendments to subsections 1, 2, and 7 apply to real estate installment contracts signed on or after July 1, 2010; 2010 Acts, ch 1058, §2

558.47 Repealed by 86 Acts, ch 1079, § 7.**558.48 Transfer fee covenant — prohibition.**

1. For purposes of this section, unless the context otherwise requires:

a. “*Transfer*” means the sale, gift, conveyance, assignment, inheritance, or other transfer of ownership interest in real property located in this state.

b. (1) “*Transfer fee*” means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept a transfer of an interest in real property,

regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer.

(2) “Transfer fee” does not include any of the following:

(a) Any consideration payable by the transferee to the transferor for the interest in real property being transferred.

(b) Any commission payable to a licensed real estate broker for the transfer of real property under an agreement between the broker and the transferee or transferor.

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against real property, including but not limited to any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any other consideration allowed by law and payable to the lender in connection with the loan.

(d) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including but not limited to any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

(e) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

(f) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

c. “Transfer fee covenant” means a declaration or covenant purporting to affect real property which requires or purports to require the payment of a transfer fee to the declarant or other person specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

2. A transfer fee covenant shall not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as an equitable servitude or otherwise. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

2010 Acts, ch 1152, §1, 2

[SP] Section takes effect April 23, 2010, and applies to any lien purporting to secure the payment of a transfer fee under a transfer fee covenant which is filed in this state on or after April 23, 2010; 2010 Acts, ch 1152, §2

558.49 Index records.

The recorder must keep index records to show the following:

1. Each grantor.
2. Each grantee.
3. The date and time when the instrument was filed with the recorder.
4. The date of the instrument.
5. The nature of the instrument.
6. The document reference number where the record of the instrument may be found.
7. The description of the real estate affected by the instrument.

[C51, §1213; R60, §2222; C73, §1943; C97, §2935; S13, § 2935; C24, 27, 31, 35, 39, §10109; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.49]

2001 Acts, ch 44, §23, 24; 2006 Acts, ch 1031, §8; 2010 Acts, ch 1023, §2

558.50 and 558.51 Repealed by 2001 Acts, ch 44, § 33.

558.52 Alphabetical arrangement.

The entries shall show the names of the respective grantors and grantees, arranged in alphabetical order. When the instrument is executed by a personal representative, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity,

the recorder shall enter upon the index the name and representative capacity of each person executing the instrument and the owner of the property if disclosed in the instrument.

[C51, §1215; R60, §2224; C73, §1945; C97, §2937; C24, 27, 31, 35, 39, §10112; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.52]

2001 Acts, ch 44, §25

558.53 and 558.54 Repealed by 2001 Acts, ch 44, § 33.

558.55 Filing and indexing — constructive notice.

The recorder must endorse upon every instrument properly filed for recording in the recorder's office, the day, hour, and minute when filed for recording and the document reference number, and enter in the index the entries required to be entered pursuant to sections 558.49 and 558.52. The recording and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by the instruments.

[C51, §1214; R60, §2223; C73, §1944; C97, §2936; C24, 27, 31, 35, 39, §10115; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.55]

2001 Acts, ch 44, §26; 2007 Acts, ch 101, §4; 2009 Acts, ch 27, §34

558.56 Repealed by 70 Acts, ch 1169, § 6.

558.57 Entry on auditor's transfer books.

After the recorder has accepted for recording and indexed any deed, real estate installment contract, or other instrument unconditionally conveying real estate or altering a real estate contract by assigning the buyer's or seller's interest, changing the name of the buyer or seller, changing the legal description of the property, forfeiting or canceling the contract, or making other significant changes, the auditor shall make the proper entries upon the transfer books in the auditor's office.

[C73, §1952, 1953; C97, §2932, 2934; C24, 27, 31, 35, 39, §10116; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.57]

85 Acts, ch 159, §8; 86 Acts, ch 1079, §2; 2000 Acts, ch 1058, §56; 2001 Acts, ch 143, §5; 2004 Acts, ch 1144, §4; 2006 Acts, ch 1031, §9

558.58 Recorder to collect and deliver to auditor.

1. At the time of filing a deed, real estate installment contract, or other instrument mentioned in section 558.57, the recorder shall collect, and note payment of, the recording fee and the auditor's transfer fee, as provided by law, except as provided in subsection 2.

After the recorder has accepted the instrument for recording, the instrument shall be indexed and then delivered to the auditor to be placed on the auditor's transfer books.

2. When the person required to pay a fee relating to a real estate transaction is a governmental subdivision or agency, the recorder, at the request of the governmental subdivision or agency, shall bill the governmental subdivision or agency for the fees required to be paid. The governmental subdivision or agency shall pay the fees and taxes due within thirty days after the date of filing.

[C24, 27, 31, 35, 39, §10117; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.58]

86 Acts, ch 1079, §3; 2000 Acts, ch 1058, §56; 2001 Acts, ch 143, §6; 2006 Acts, ch 1031, §10

558.59 Final record.

Every instrument shall be recorded as soon as practicable, after which the recorder shall complete the entries to show the document reference number where the record is to be found.

[C51, §1216; R60, §2225; C73, §1946; C97, §2938; C24, 27, 31, 35, 39, §10118; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.59]

2001 Acts, ch 44, §27

558.60 Transfer and index books.

The county auditor shall keep in the county auditor's office books for the transfer of real estate, which shall consist of a transfer book, index book, and plat book. As used in this context, "book" means the method of data storage and retrieval utilized by the county auditor.

The auditor shall index the real estate transfers by block and lot or by township, range, section, section quarter, and subdivision, as occasion may require. The transfer books shall show all of the following:

1. Each grantor.
2. Each grantee.
3. The date of the instrument.
4. The nature of the instrument.
5. The document reference number where the record of the instrument may be found.
6. The description of the real estate conveyed.

[C73, §1948; C97, §2927; C24, 27, 31, 35, 39, §10119; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.60]

2006 Acts, ch 1031, §11

558.61 Form of transfer book. Repealed by 2006 Acts, ch 1031, § 16. See § 558.60.

558.62 Form of index book. Repealed by 2006 Acts, ch 1031, § 16. See § 558.60.

558.63 Book of plats — how kept.

The auditor shall keep the book of plats showing the number of lot and block, or township and range, divided into sections and subdivisions as occasion may require, and shall designate thereon each piece of real estate and the name of the owner. The plats shall be lettered or numbered so that they may be conveniently referred to in the transfer book.

[C73, §1950; C97, §2929; C24, 27, 31, 35, 39, §10122; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.63]

2006 Acts, ch 1031, §12

558.64 Entries of transfers. Repealed by 2006 Acts, ch 1031, § 16. See § 558.60.

558.65 Council's approval of certain plats.

No conveyances or plats of additions to any city or subdivision of any lands lying within or adjacent to any city in which streets and alleys and other public grounds are sought to be dedicated to public use, or other conveyances in which streets and alleys are sought to be conveyed to such city, shall be so entered, unless such conveyances, plats, or other instruments have endorsed thereon the approval of the council of such city, the certificates of such approval to be made by the city clerk.

[S13, §2930; C24, 27, 31, 35, 39, §10124; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.65]

[P] Plats, see also chapter 354

558.66 Updating county administrative records.

1. Upon the receipt of an instrument that satisfies the requirements of this section and the payment of the applicable fees authorized in section 331.507, subsection 2, the auditor shall enter the updated or corrected real estate ownership information in the transfer books and index required by section 558.60.

2. In the case of an instrument filed with the recorder that satisfies the requirements of this section, the recorder shall collect the applicable fees authorized under section 331.507, subsection 2, and section 331.604 and pay such fees to the treasurer as provided in section 331.902, subsection 3.

3. Each of the following instruments shall be accepted by the recorder for the purpose of updating the county transfer books and index if a conveyance has not occurred:

- a. A certificate issued by the clerk of the district court or clerk of the supreme court

indicating that the title to real estate has been finally established in any named person by judgment or decree or by will.

b. An affidavit of or on behalf of a surviving joint tenant or a person who owns the remainder interest. The affidavit shall include substantially the following:

- (1) The name of the affiant.
- (2) The name of the surviving joint tenant or owner of the remainder interest, as applicable, whose name the county records should reflect ownership of title.
- (3) The name of the deceased joint tenant or life tenant and such person's date of death.
- (4) The legal description of the real estate located in the county.
- (5) The description and date of filing and recording of the conveyance instrument by which the surviving joint tenant or owner of the remainder interest acquired title.
- (6) The document reference number of the instrument establishing title, if applicable.
- (7) A request that the auditor enter the information on the transfer books and index pursuant to subsection 1.

c. An affidavit by or for a person, other than an individual, following a merger, consolidation, name change, or change of fiduciary. The affidavit shall include substantially the following, as applicable:

- (1) The former name of the person.
- (2) The new name of the person.
- (3) The legal description of the real estate located in the county.
- (4) A description of the merger, consolidation, name change, or change of fiduciary.
- (5) A request that the auditor enter the information on the transfer books and index pursuant to subsection 1.

d. Articles of merger, consolidation, or name change as required by another provision of law if the legal description of the real estate is attached thereto.

4. An instrument recorded pursuant to this section is not a muniment of title.

[C97, §2931; C24, 27, 31, 35, 39, §10125; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.66]

85 Acts, ch 159, §9; 86 Acts, ch 1079, §4; 90 Acts, ch 1035, §1; 91 Acts, ch 86, §1; 93 Acts, ch 109, §14; 2000 Acts, ch 1058, §56; 2006 Acts, ch 1129, §3; 2009 Acts, ch 27, §35; 2011 Acts, ch 21, §1

[P] Title established or changed — certificate; §602.8102(10)

[T] Section stricken and rewritten

558.67 Correction of books and instruments.

The auditor from time to time shall correct any error appearing in the transfer books, and shall notify the grantee of any error in description discovered in any instrument filed for transfer, and permit the same to be corrected by the parties before completing such transfer.

[C73, §1954; C97, §2933; C24, 27, 31, 35, 39, §10126; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.67]

558.68 Perpetuities.

1. A nonvested interest in property is not valid unless it must vest, if at all, within twenty-one years after one or more lives in being at the creation of the interest and any relevant period of gestation.

2. a. In determining whether a nonvested interest would violate the rule against perpetuities in subsection 1, the period of the rule shall be measured by actual events rather than by possible events, in any case in which that would validate the interest. For this purpose, if an examination of the facts in existence at the time the period of the rule begins to run reveals a life or lives in being within twenty-one years after whose deaths the nonvested interest will necessarily vest, if it ever vests, that life or lives are the measuring lives for purposes of the rule against perpetuities with respect to that nonvested interest and that nonvested interest is valid under the rule.

b. If no such life or lives can be ascertained at the time the period of the rule begins to run, the measuring lives for purposes of the rule are all of the following:

(1) The creator of the nonvested interest, if the period of the rule begins to run in the creator's lifetime.

(2) Those persons alive when the period begins to run, if reasonable in number, who have been selected by the creator of the interest to measure the validity of the nonvested interest or, if none, those persons, if reasonable in number, who have a beneficial interest whether vested or nonvested in the property in which the nonvested interest exists, the grandparents of all such beneficiaries and the issue of such grandparents alive when the period of the rule begins to run, and those persons who are the potential appointees of a special power of appointment exercisable over the property in which the nonvested interests exist who are the grandparents or issue of the grandparents of the donee of the power and alive when the period of the rule begins to run.

(3) Those other persons alive when the period of the rule begins to run, if reasonable in number, who are specifically mentioned in describing the beneficiaries of the property in which the nonvested interest exists.

(4) The donee of a general or special power of appointment if the donee is alive when the period of the rule begins to run and if the exercise of that power could affect the nonvested interest.

3. A nonvested interest that would violate the rule against perpetuities whether its period is measured by actual or by possible events shall be judicially reformed to most closely approximate the intention of the creator of the interest in order that the nonvested interest will vest, even though it may not become possessory, within the period of the rule.

4. This section is applicable to all nonvested interests created on, before, or after July 1, 1983.

5. This section shall not impair the validity of an environmental covenant established pursuant to chapter 455I.

[C51, §1191; R60, §2199; C73, §1920; C97, §2901; C24, 27, 31, 35, 39, §10127; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.68]

83 Acts, ch 20, §1; 2005 Acts, ch 102, §17

558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, hazardous waste, and private sewage disposal systems — liability.

1. With each declaration of value submitted to the county recorder under chapter 428A, there shall be submitted a groundwater hazard statement stating all of the following:

a. Whether any known private burial site is situated on the property, and if a known private burial site is situated on the property, the statement shall state the approximate location of the site.

b. That no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 455B.190 or 460.302.

c. That no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property.

d. That no known underground storage tank, as defined in section 455B.471, subsection 11, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank.

e. That no known hazardous waste as defined in section 455B.411, subsection 3, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources.

f. That no known private sewage disposal system exists on the property or, if such private sewage disposal system exists, that the system has been inspected pursuant to section 455B.172, subsection 11, or that the property is not subject to inspection due to its exclusion from a regulated transfer pursuant to section 455B.172, subsection 11, paragraph "a".

2. The groundwater hazard statement shall be signed by at least one of the sellers or their agents.

3. The county recorder shall refuse to record any deed, instrument, or writing for which a

declaration of value is required under chapter 428A unless the groundwater hazard statement required by this section has been submitted to the county recorder.

4. A buyer of property shall be provided with a copy of the submitted groundwater hazard statement by the seller.

5. The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with department of natural resources rules without a permit is not required to be reported as the disposal of solid waste or hazardous waste.

6. The director of the department of natural resources shall prescribe the form of the groundwater hazard statement.

7. The county recorder shall transmit the groundwater hazard statements to the department of natural resources at times and in a manner directed by the director of the department.

8. The owner of the property is responsible for the accuracy of the information submitted on the groundwater hazard statement. The owner's agent shall not be liable for the accuracy of information provided by the owner of the property. The provisions of this subsection do not limit liability which may be imposed under a contract or under any other law.

87 Acts, ch 225, §307; 88 Acts, ch 1169, §16, 17; 90 Acts, ch 1235, §42; 99 Acts, ch 140, §1; 2006 Acts, ch 1014, §9; 2010 Acts, ch 1120, §6; 2011 Acts, ch 9, §8

[T] Subsection 1, paragraph e amended

558.70 Contract disclosure statement required for certain residential real estate installment sales.

1. Prior to executing a residential real estate installment sales contract, the contract seller shall deliver a written contract disclosure statement to the contract purchaser which shall clearly set forth the following information:

a. If the real estate subject to the contract has been separately assessed for property tax purposes, the current assessed value of the real estate.

b. (1) A complete description of any property taxes due and payable on the real estate and a complete description of any special assessment on the real estate and the term of the assessment.

(2) Information on whether any property taxes or special assessments are delinquent and whether any tax sale certificates have been issued for delinquent property taxes or special assessments on the real estate.

c. A complete description of any mortgages or other liens encumbering or secured by the real estate, including the identity and address of the current owner of record with respect to each such mortgage or lien, as well as a description of the total outstanding balance and due date under any such mortgage or lien.

d. A complete amortization schedule for all payments to be made pursuant to the contract, which amortization schedule shall include information on the portion of each payment to be applied to principal and the portion to be applied to interest.

e. If the contract requires a balloon payment, a complete description of the balloon payment, including the date the payment is due, the amount of the balloon payment, and other terms related to the balloon payment. For purposes of this paragraph, a "balloon payment" is any scheduled payment that is more than twice as large as the average of earlier scheduled payments.

f. The annual rate of interest to be charged under the contract.

g. A statement that the purchaser has a right to seek independent legal counsel concerning the contract and any matters pertaining to the contract.

h. A statement that the purchaser has a right to receive a true and complete copy of the contract after it has been executed by all parties to the contract.

i. The mailing address of each party to the contract.

j. If the contract is subject to forfeiture, a statement that if the purchaser does not comply with the terms of the contract, the purchaser may lose all rights in the real estate and all sums paid under the contract.

2. The contract disclosure statement shall be dated and signed by each party to the

contract, and the contract purchaser shall be provided a complete copy of the contract at the time the disclosure statement is delivered to the contract purchaser pursuant to subsection 1.

3. Within five days after a residential real estate installment sales contract has been executed by all parties to the contract, the contract seller shall mail a true and correct copy of the contract by regular first class mail to the last known address of each contract purchaser. However, this requirement is satisfied as to any purchaser who acknowledges in writing that the purchaser has received a true and correct copy of the fully executed contract.

4. This section applies to a contract seller who entered into four or more residential real estate contracts in the three hundred sixty-five days previous to the contract seller signing the contract disclosure statement. For purposes of this subsection, two or more entities sharing a common owner or manager are considered a single contract seller. This section does not apply to a person or organization listed in section 535B.2, subsections 1 through 6.

5. A violation of this section affects title to property only as provided in section 558.71.

6. For purposes of this section, “*residential real estate*” means a residential dwelling containing no more than two single-family dwelling units, which is not located on a tract of land used for agricultural purposes as defined in section 535.13.

7. This section and any rules adopted to administer this section shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by any other provision of law, or under a contract between the parties.

2002 Acts, ch 1136, §1, 6; 2005 Acts, ch 83, §9, 10; 2007 Acts, ch 22, §99; 2008 Acts, ch 1160, §36

558.71 Civil liabilities.

1. A contract purchaser injured by a violation of section 558.70 may within one year of the execution of the contract bring an equitable action in the district court of record where the real estate is located to obtain relief as follows:

a. The court may rescind a contract that remains in existence at the time the action is commenced, and award restitution to the contract purchaser determined in accordance with the standards for damages specified in paragraph “b”.

b. If the contract has been terminated by any means prior to commencement of the action, the contract purchaser may recover a money judgment against the original contract seller for a sum equal to all amounts the contract purchaser paid to the contract seller, plus the reasonable value of any improvements to the real estate made by the contract purchaser, plus any other proximately caused or incidental damages, less the fair rental value of the real estate for the period of time the contract purchaser was in possession of the real estate. For the purposes of this paragraph, the fair rental value of the real estate shall be based on the fair rental value of the real estate as of the date the real estate installment sales contract was executed by all parties to the contract.

2. A contract purchaser alleging a violation of section 558.70 bears the burden of establishing such violation by a preponderance of the evidence.

3. An order of rescission or a money judgment awarded shall not affect any rights or responsibilities arising from any conveyance or encumbrance made by either the contract purchaser or the contract seller prior to the filing of a lis pendens in the action in which such relief is sought, unless it is established by clear and convincing evidence that the recipient of such conveyance or encumbrance had prior knowledge that the contract was executed in violation of the requirements of section 558.70.

4. In an action in which a contract purchaser obtains relief under this section, the court shall also award to such contract purchaser reasonable attorney fees incurred in bringing the action.

2002 Acts, ch 1136, §2, 6