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Jeff Hicks speaks on Legal Effects of Deeds in MI

—Topic of Probate Section Meeting

BY ROBERTA M. GUBBINS
Legal News

“As part of our practice as estate planning lawyers, we do a lot of deeds. Jeff Hicks, of Hicks and Mullett, specialists in real property law, is here to talk about the legal effects of various deeds and how they affect our practice in Michigan,” said Ryan Nelson, introducing Hicks to the members of the Probate Section of the Ingham County Bar Association. The section meeting was held on November 24th at Cooley Law School in downtown Lansing.

Warranty deeds, quitclaim deeds, and covenant deeds or deed “C” are the three deeds commonly used in Michigan.

“Warranty deeds, the most common deed, guarantees to the buyer that there are no exceptions to the title and that the buyer is receiving full interest in the property or, as we learned in law school, all the sticks in the bundle.” Some points to remember about warranty deeds:

- The deed must contain the word warrant in the body of the deed; as long as the document uses the word warrant, it is considered a war-

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(l-r) Ryan Wilson, Chair, ICBA Probate Section, and Jeff Hicks, lawyer and speaker, consult prior to opening the meeting of the section. —Legal News photo by Roberta M. Gubbins

MI Adoption Day held Nov. 24

- State’s Celebration of adoptive families now in Seventh year
- Heart Gallery exhibit of adoptable children on display at Michigan Hall of Justice

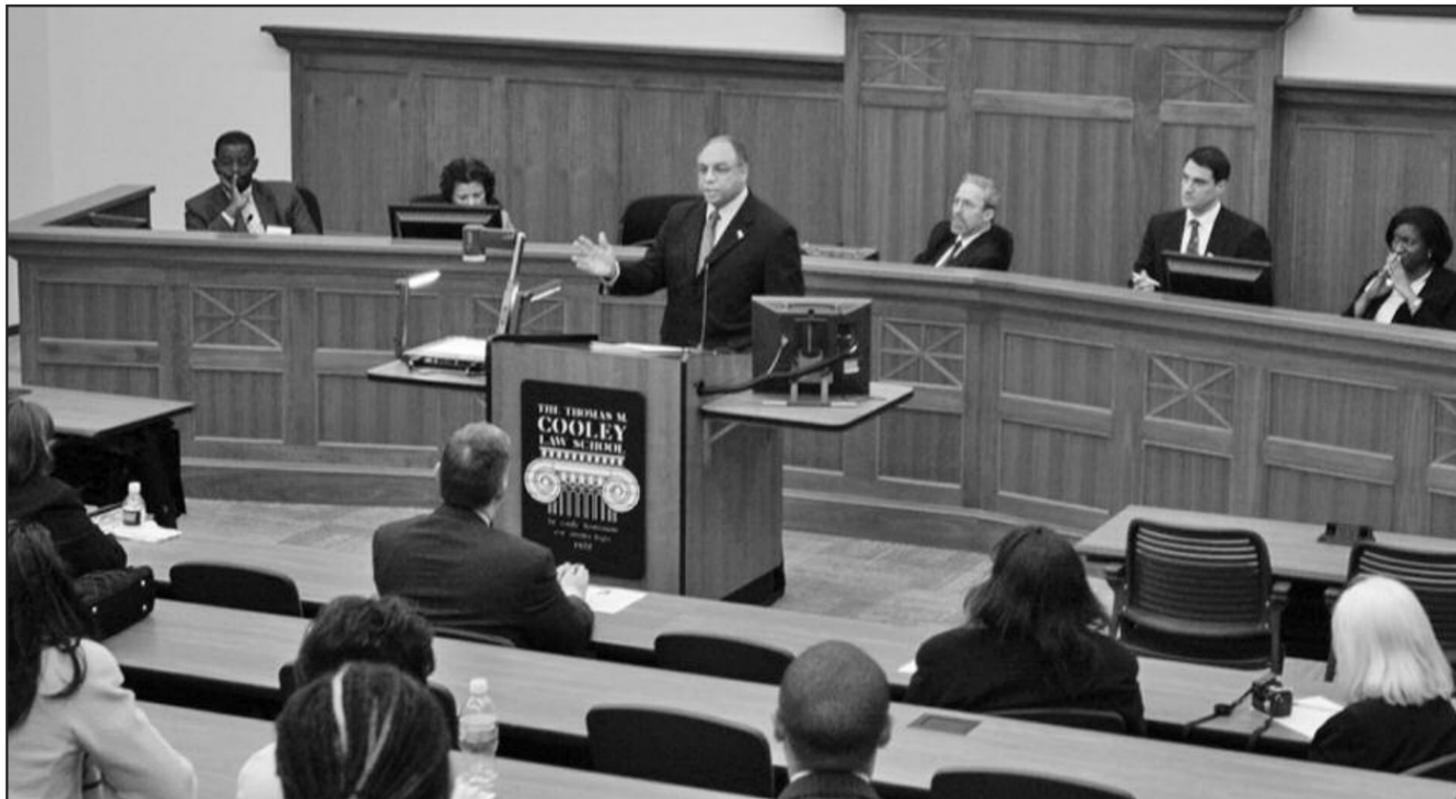
LANSING, MI, November 19, 2009 – This Thanksgiving, many Michigan families had special reason to give thanks: the addition of new family members through adoption on Michigan’s seventh annual Adoption Day.

Thirty Michigan counties held Adoption Day events on or about November 24, the date designated by the Michigan Supreme Court as “Michigan Adoption Day” when about 225 adoptions will be finalized. The event is co-sponsored by the Michigan Supreme Court, the Michigan Department of Human Services (DHS), and the Child Welfare Services division of the State Court Administrative Office.

Local events included finalizing adoptions, and parties for

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“WE CAN, WE WILL, WE MUST: Creating Opportunities for the Next Generation of Lawyers”



The expanded Cooley facility in Auburn Hills recently was showcased during a symposium titled, “We Can, We Will, We Must: Creating Opportunities for the Next Generation of Lawyers.” Cooley’s Christopher Johnson (at the podium), director of the new Corporate Law and Finance LLM program, was among the program participants. Joining Johnson were Harold Pope, attorney with Jaffe, Raitt, Heuer & Weiss; Hon. Victoria Roberts, federal district court judge; John Nussbaumer, associate dean of Cooley’s Auburn Hills campus; Lawrence Garcia, attorney with Allen Brothers and president of the Hispanic Lawyers Association of Michigan; Mary Ferguson, Michigan State University College of Law director of diversity services; and David Koelsch, director of the University of Detroit Mercy Immigration Law Clinic.

—Photo courtesy of Cooley Law School

SOS continues office modernization drive

- Evolving branch structure emphasizes service, efficiency

Secretary of State Terri Lynn Land is continuing her successful Branch Office Modernization Program to deliver quality service that recognizes changing customer trends and Michigan’s fiscal realities.

Land is creating additional PLUS offices and another SUPER!Center so more customers have access to enhanced services such as expanded Wednesday hours, payment with Discover and MasterCard at the counter, instant vehicle titles and Self-Service Stations for immediate license plate tab renewals. SUPER!Centers offer the extremely popular Saturday hours as well.

“We always have our eye toward the future,” Land said. “Customer trends continue to evolve and we’re keeping pace. We are proactively managing our limited resources so we can provide quality services while operating in Michigan’s current budget climate. Fortunately, our modernization program provides us with a proven blueprint for success.”

Factors such as statewide population shifts and surging customer enthusiasm for doing business online compel the department to adjust its branch office system for optimal

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Off the Record

—Commentary by Roberta

National Novel Writing Month

November is National Novel Writing Month (NaNoWriMo). It is described on the web site as “a fun seat-of-your-pants approach to novel writing.” Writers begin writing November first. The goal is to write a 175 page, 50,000 word, novel by midnight, November 30. To accomplish their goal, writers must create at least 1,667 words a day.

My writer-daughter, Melissa, and I are two of 120,000 plus folks from all over the world sitting in front of our computers every day putting words to paper. There are 189 active writers in the Lansing area. They have written over two million words so far. Some of the words are good, others are not so good, and some are awful.

Many times the characters in our books take over and we are at a loss to know where they are going,

but we write every day. The only thing that matters during NaNoWriMo is output. I am not sure where the “fun” part comes in.

This approach makes us lower our expectations, take risks with our words, and write on the fly. We forge ahead knowing all can be revised in December or January.

Do we win a prize when we complete our 50,000 words? No.

Will we find a publisher anxious to place our manuscript on a front table at the bookstore where it will rise to the bestseller list assuring our status as overnight sensations? No.

We will have the satisfaction of completing a novel or a major part of a novel and the exhilarating feeling of setting an ambitious creative goal and nailing it. We will be on the list of winners in NaNoWriMo archives. We

will receive an official “Winner” web badge and a PDF Winner’s Certificate, which we will have to print on our own printers.

What does all this mean to you, my sometimes-faithful readers? It means that this month this column is shorter than usual. I am using my words sparingly. I am saving them to be used this evening when I am again in a fictional land with characters that don’t always follow direction.

I wish you all a wonderful Thanksgiving holiday. Melissa and I will be thankful that our word goal is closer, for the support of our families who didn’t always understand but fixed their own dinner, anyway, and for the feeling of accomplishment that will come at midnight on November 30th when we type the 50,000th word. Care to join us next year?

Legal Effects of Deeds addressed at probate meeting

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ranty deed regardless of its title.

- The deed must state that the owner owns the property, has the right to convey it, guarantees quiet possession of the property, that the property is free from all encumbrances and that the owner will warrant and defend the title against all lawful claims.

“Under case law, the owner must defend against all ‘lawful’ claims against the property. The courts have defined ‘lawful’ claims as demands recognized by law and supported by right-ful and superior interests such as adverse possession.” In situations where someone other than the owner such as a personal representative of an estate is selling the property, “the right to convey will take the form of a statement asserting they have that right.”

When heirs to the property are unable to agree on its sale, “we ask the judge to order that one heir could sign on behalf of the other, because we knew that there was no way we could get the aggrieved heir to show up at closing. In that instance the covenant of the right to convey would be supported by court order attached to the deed,” Hicks said.

The covenant against encumbrances such as construction liens, tax liens, etc. is personal. “Case law says that this covenant does not include a

right to defend—however, if you buy a piece of property and suddenly someone appears and tells you that they have a right to harvest a stand of trees on your property, you will go back to your grantor and if he doesn’t agree to defend you, you will file suit and force his hand.”

The statute of limitations on claims for a breach of the covenant of warranty is ten years. “Damages under such situations can be determined using the fair market value of the property with and without the encumbrance, which will create a dollar figure. If the encumbrance is rectified before the case is brought, the damages are limited to whatever was necessary to remove the encumbrance such as attorney fees, your time, and other expenses created during the course of the action.”

“Quitclaim deeds only convey to the purchaser the interests in the property held by the seller and do not transfer title free and clear of any exceptions or encumbrances. It is a deed used when you do not want to go to the trouble of a title search and/or wish to protect yourself from potential liabilities for liens on the property.”

“A buyer who takes a quitclaim deed for a piece of property already sold by the seller has a piece of paper that is not worth the paper it is printed on. No warranties pass with a quitclaim deed.”

Limited warranty deeds are illegal in Michigan. In 1931, Michigan enacted a statute making it a misdemeanor for any person to “print, sell or keep for sale any blank forms of deeds containing the words ‘warranty deed’ unless the deed is an “absolute warranty” deed. “A Covenant deed or Deed C, which only guarantees that the title is clear with some limitation, gets around this prohibition against limited warranty deeds. The deed includes covenants to the buyer and expands on the quitclaim deed but doesn’t go as far as the warranty deed.”

A fiduciary deed is used when trustees or personal representatives of an estate are selling property. “These deeds do not bind the fiduciary personally, they bind the estate or trust. A Ladybird deed is another example of a deed as an estate planning device. The Ladybird deed or transfer on death deed is a modified quitclaim or warranty deed that grants a life estate to the grantor and the remainder to a named person.”

Jeff Hicks, Hicks & Mullett, may be reached at 517-321-9770. The next meeting of the Probate Section will be on Tuesday, December 15th at the State Bar of Michigan Michael Franck building. The speaker will be George Strander, Court administrator and probate register from the Ingham County Probate Court.

Evolving branch structure at SOS

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results. For example, there were 2 million fewer branch office transactions in fiscal year 2009 than in fiscal year 2007.

Land aggressively manages her agency’s resources to ensure maximum focus on customer service and program efficiency. In addition to taking steps such as consolidating office space and investing in cost-saving technology, she has reduced staffing levels by 20 percent through attrition.

“Our long-range planning and tough decisions are paying off,” Land said. “The department is positioned to balance the needs of customers with our state’s fiscal realities. Optimizing our use of people, dollars and technology reduces our investments in ‘bricks and mortar’ facilities while ensuring consistent levels of service. This prudent redirection of resources keeps us at the forefront of innovative service and fiscal responsibility.”

Land introduced the modernization program in 2004. It allows the department to offer enhanced services by more effectively targeting its limited resources.

Twenty-two PLUS offices and five SUPER!Centers were created in the initial phase. Additional rollouts have added 16 PLUS offices and another SUPER! Center for a current total of 38 PLUS offices and six SUPER! Centers.

The next round features 10 new PLUS offices and an additional SUPER!Center as well as expansions of certain existing PLUS offices. **Local offices include:**

Ingham County: The Capital Area SUPER!Center will be formed by consolidating the East Lansing and Lansing Downtown offices. A location for the SUPER!Center will be determined.

Jackson County: The Jackson County PLUS Office will relocate to a larger facility once it consolidates with the current Jackson Downtown office. The new location will be determined.

Some of the projects could begin before year’s end though specific time frames have not been established. Visit www.michigan.gov/sos for more information on department services and branch office locations.

Cox announces major consumer protection win

—settlement with Vonage

LANSING - Attorney General Mike Cox today announced a multi-million dollar, 32 state settlement with Internet phone service giant Vonage, requiring the Delaware corporation to offer refunds to eligible Michigan customers, make significant changes to its marketing practices and honor consumer cancellation requests.

Filed this afternoon in Ingham County Circuit Court, the settlement addresses customer complaints about the difficulty or inability to cancel their Vonage service. The company formerly paid incentives to customer service representatives for retaining or “saving” customers in lieu of cancellation when consumers called to terminate their service. As a result, consumers reported that cancellation was extremely difficult and sometimes impossible. The agreement puts strict limitations on this practice and requires recording and verification of these telephone calls.

The settlement also addresses additional marketing practices which have led to consumer confusion about the costs associated with Vonage equipment and service. Specifically, Vonage will be forced to revise its disclosures regarding the offer of “free” services, money-back guarantees and trial periods.

“Business practices like these are unfair to Michigan families,” said Cox. “When a business solicits new customers with advertisements offering a ‘free trial period’ or ‘money back guarantee’ they have an obligation to deliver.”

Current and former Vonage customers across the state are eligible to receive refunds if they were billed after attempting to cancel their service, attempted but failed to qualify for the company’s cash-back guarantee or signed up for a free trial without being told there was a minute limitation on their phone usage.

The broad restitution plan requires Vonage to make refunds to eligible consumers who filed unresolved complaints with the Attorney General regarding unauthorized charges beginning on January 1, 2004 and extending until March 16, 2010.

Attorney General Cox’s office led the investigation along with Connecticut, Illinois, Oregon, Pennsylvania, Texas, and Wisconsin. Other participants in the settlement include Alabama, Arizona, Arkansas, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Vermont, Washington and West Virginia. In addition to the customer refunds, Vonage has agreed to reimburse taxpayers in these states a combined \$3 million.

Michigan consumers who wish to file a complaint may do so online at <http://www.michigan.gov/ag> or by writing to the Consumer Protection Division, P.O. Box 30213, Lansing, MI 48909.

Complete terms of the settlement agreement (“Assurance of Discontinuance”) are available on the Attorney General’s website; <http://www.michigan.gov/ag>.

Give a State Park Gift Certificate this season

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list of boating access sites that require a permit, visit the Boating Section on the DNR’s Web site at www.michigan.gov/dnr, or visit www.mcgi.state.mi.us/MRBIS for all boating access sites throughout the state.

Please contact a state park or recreation area near you to determine their hours and availability. Information about state parks or recreation areas, boating access sites, winter

camping opportunities, events or accessibility, are available on the DNR’s Web site, under Recreation, Camping & Boating, or by contacting the Lansing Office at 517-373-9900 (TTY/TDD 711 Michigan Relay Center for the hearing impaired).

The Michigan Department of Natural Resources is committed to the conservation, protection, management, accessible use and enjoyment of the State’s natural resources for current

and future generations.

**Great Lakes, Great Times,
Great Outdoors**

<p>EXPEDITE</p> <p>YOUR PUBLIC NOTICES</p> <p>Fax them to the</p> <p>Ingham County Legal News</p> <p>FAX 517.676.3495</p>
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Web Site has New and Improved Searching Capabilities

The Ingham County Legal News new Web site now offers the ability for subscribers to use various search criteria to locate legal notices published in the

Legal News. For further information regarding finding legal notices go to www.legalnews.com or contact us directly at 517-676-3395