

COURT OF APPEALS UPHOLDS UNCAPPING IN PRE-2014 PARENT-CHILD TRANSFER

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The Michigan Court of Appeals held family members could not use a 2012 corrective deed to change the grantees on a 2004 deed and avoid a 2004 uncapping. *Lewallen v. Township of Porter* (Michigan Court of Appeals Feb. 20, 2014).

In 2004, Mom and Dad quit claimed residential property to their two adult children as tenants in common. In 2011, the municipality declared the 2004 deed an uncapping event. MCL 211.27a. The parents then executed a "corrective" deed and supporting affidavit stating the 2004 deed was really intended to grant title to the parents and children as joint tenants with rights of survivorship, and thereby avoid the uncapping. The family claimed the 2012 corrective deed retroactively nullified the 2004 deed.

The Court disagreed. The Court relied, in part, on Michigan Land Title Standard 3.3, which states "[A] grantor who has conveyed real property by an effective, unambiguous instrument cannot, by executing a subsequent instrument, make a substantial change in the name of the grantee..." Although Standard 3.3 notes there are circumstances under which a later "corrective" deed may be effective, the Court found this exception inapplicable.

The family also argued public policy supports their position, since the Michigan Legislature recently amended the uncapping statute to add a new exemption for transfers, like this one, to persons related by blood or affinity to the first degree. MCL 207.27a(7)(s). The Court found the new uncapping exemption was not intended to take retroactive effect.

Takeaway: Always review the language of the uncapping statute and current Michigan Department of Treasury Transfer of Ownership Guidelines when advising clients on drafting deeds and completing property transfer affidavits.

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