

## EXAMINERS' ANALYSIS OF QUESTION NO. 6

1. As owner, Freda is entitled to recover possession of the apartment that Jared currently occupies. Her reasons are legitimate and not against the law, and Jared begins a new tenancy with Freda each month unless terminated. Generally, employing self-help methods to regain possession of rental real property is not allowed in Michigan. *Deroshia v Union Terminal Piers*, 151 Mich App 715, 718-720 (1986). Thus, unless Jared voluntarily moves, Freda must follow the procedures set forth in the Michigan Summary Proceedings Act (the "Act") to recover possession. MCL 600.5701 et seq. Specifically, because Jared has a month-to-month tenancy arrangement and pays rent monthly, Freda is required to first give Jared 1 month's written notice demanding possession in order to terminate the tenancy. MCL 600.5714(1)(c)(iii); MCL 554.134(1); MCL 600.5716. If Jared does not vacate the property by the time the termination is effective, Freda may begin summary proceedings in the district court and obtain a judgment of possession against him. MCL 600.5741. If a judgment is issued and Jared still has not vacated after the date designated in the judgment (which must be at least 10 days from the judgment date), Freda may apply to the court for an order of eviction (a/k/a writ of restitution) which would direct an authorized person (e.g. sheriff) to restore full possession of the premises to her. MCL 600.5744(1) and (4).

2. As indicated above, Freda would be unable to legally employ self-help measures to seek possession of the apartment from Bryce for his failure to pay rent. Under the Act, one of the ways that a landlord is entitled to recover possession of the property by summary proceedings is "[w]hen a person holds over premises after failing or refusing to pay rent due under the lease or agreement by which the person holds the premises within 7 days from the service of a written demand for possession for nonpayment of the rent due." MCL 600.5714(1)(a). Thus, Freda must first serve Bryce with a written seven-day notice to quit to terminate the tenancy. See also, MCL 554.134(2). If Bryce does not bring the rent current within those seven days and still occupies the premises, Freda may begin a summary proceedings action against Bryce as indicated above. A possession judgment in a case based upon nonpayment of rent allows the tenant the option to either pay the amount determined to be owed or vacate the premises. If Bryce does

neither within the time prescribed in the possession judgment (again, which must be at least 10 days from the judgment date), Freda may obtain an order of eviction from the court to regain possession of the apartment. If Bryce pays to Freda monies in the amount and within the time set forth in the judgment, no eviction order may issue. MCL 600.5744(6).

3. Freda could initiate summary proceedings under the Act to regain possession of the studio apartment that is being occupied by Maya as a trespasser. MCL 600.5714(1)(f). Because Maya is a trespasser, she would not be entitled to any previous notice before Freda institutes the court action, and an order of eviction could be issued "immediately after the entry of a judgment for possession." MCL 600.5744(2)(d). Most significantly, however, is that because of Maya's trespasser status, Freda could also opt to use self-help and forgo the judicial process pursuant to a revised Michigan statute that allows a person entitled to possession to use force to enter premises occupied by a trespasser, so long as criminal laws are not violated. See MCL 600.5711(3) which states:

If the occupant took possession of the premises by means of a forcible entry, holds possession of the premises by force, or came into possession of the premises by trespass without color of title or other possessory interest, the owner, lessor, or licensor or an agent thereof may enter the premises and subsection (2) [regarding entry without force and only in a peaceable manner] does not apply to the entry. However, any forcible entry shall not include conduct proscribed by chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h.