

**QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 12**

Yonder Development Company ("YDC") owns a large plot of land in downtown Peaceful, Michigan (the "property"), the site of two worn old houses it rents out to college students. YDC is on the verge of going bankrupt, and decides to sell the property to a buyer, Peggy Porter, who desires to tear down the houses and build a luxury high-rise on the property.

For at least 20 years, Billy Smith, owner of the house behind the property, has been consistently cutting a path between the two old houses on the property to attend approximately seven college home football games each year. The ground along the path has been worn down and the path is visible from the street. College students and other Peaceful residents have also used the path, nicknaming it the "Appalachian Trail." One year ago, YDC erected a fence, but left a gap where the path cut through the property. Peggy wants to remove the path by building over it.

Gordon Ferry is a student tenant in one of the two YDC houses on the property. He has complained repeatedly to YDC about a gaping hole in the center of his kitchen floor, and filed a complaint with the city's housing commission one week before the sale of the property to Peggy was finalized. Immediately after the sale was finalized, Peggy told all of the tenants that she wanted to take possession of the houses on the property. Gordon, who at that time was behind in monthly rent payments, complained to Peggy about the hole in the floor and told her that he had already filed a complaint with the city's housing commission. Peggy told him "it's not my problem." Peggy immediately and properly served written demands for possession on all the tenants of the property. When Gordon, who was still behind on the rent, did not vacate the apartment within one month as directed in the demand, Peggy properly filed an action in district court for summary proceedings seeking both to recover possession by evicting him, and for money damages for back rent.

Applying Michigan law, discuss: (1) whether Billy has a legal basis for preventing Peggy from building over the "Appalachian Trail," and the likelihood of success of that claim; and (2) whether Gordon has any defense to the money claim for back rent and the claim for possession. Explain your answers.

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