

M.C.L.A. 600.5744



Michigan Compiled Laws Annotated [Currentness](#)

Chapter 600. Revised Judicature Act of 1961 ([Refs & Annos](#))

Revised Judicature Act of 1961

[Chapter 57.](#) Summary Proceedings to Recover Possession of Premises ([Refs & Annos](#))

→ **600.5744.** Issuance of writ of restitution; conditions, foreclosure of equitable right of redemption

Sec. 5744. (1) Subject to the time restrictions of this section, the court entering a judgment for possession in a summary proceeding shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to restore the plaintiff to, and put the plaintiff in, full possession of the premises.

(2) On conditions determined by the court, a writ of restitution may be issued immediately after the entry of a judgment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court:

(a) The premises are subject to inspection and certificate of compliance under the housing law of Michigan, 1917 PA 167, [MCL 125.401](#) to [125.543](#), and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

(b) Forcible entry was made contrary to law.

(c) Entry was made peaceably but possession is unlawfully held by force.

(d) The defendant came into possession by trespass without color of title or other possessory interest.

(e) The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

(f) The action is an action to which section 5714(1)(b) applies.

(3) When a judgment for possession is based upon the forfeiture of an executory contract for the purchase of the premises, a writ of restitution shall not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

(4) In all cases not controlled by subsection (2) or (3), a writ of restitution shall not be issued until the expiration of 10 days after the entry of the judgment for possession.

(5) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which a writ of restitution shall not be issued and if a bond to stay proceedings is filed, the period during which the writ shall not be issued shall be tolled until the disposition of the appeal or motion for new trial is final.

(6) When a judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of money required to be paid under or any other material breach of an executory contract for purchase of the premises, the writ of restitution shall not issue if, within the time provided, the amount stated in the judgment, together with the taxed costs, is paid to the plaintiff and other material breaches of the executory contract for purchase of the premises are cured.

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(7) Issuance of a writ of restitution following entry of a judgment for possession because of the forfeiture of an executory contract for the purchase of the premises forecloses any equitable right of redemption that the purchaser has or could claim in the premises.

CREDIT(S)

Amended by [P.A.2004, No. 105, Eff. Sept. 1, 2004](#).

HISTORICAL AND STATUTORY NOTES

2005 Electronic Update

2004 Legislation

P.A.2004, No. 105, rewrote this section, which read:

"Sec. 5744. (1) Subject to the time restrictions of this section, the court entering a judgment for possession shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to cause the plaintiff to be restored and put in full possession of the premises.

"(2) On conditions determined by the court, the writ of restitution may be issued forthwith upon the entry of judgment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court:

"(a) The premises are subject to inspection and certificate of compliance under Act No. 167 of the Public Acts of 1917, as amended, being [sections 125.401](#) to [125.543](#) of the Compiled Laws of 1948 and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

"(b) Forcible entry was made contrary to law.

"(c) Entry was made peaceably but possession is unlawfully held by force.

"(d) The defendant came into possession by trespass without color of title or other possessory interest.

"(e) The tenant, wilfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

"(3) When the judgment for possession is based upon the forfeiture of an executory contract for the purchase of the premises, the writ of restitution shall not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

"(4) In all other cases, the writ of restitution shall not be issued until the expiration of 10 days after the entry of the judgment for possession.

"(5) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which the writ of restitution shall not be issued and if a bond to stay proceedings is filed, the period during which the writ shall not be issued shall be tolled until the disposition of the appeal or motion for new trial is final.

"(6) When the judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of moneys required to be paid under or any other material breach of an executory contract for purchase of the premises, the writ of restitution shall not issue if, within the time provided, the amount as stated in the judgment, together with the taxed costs, is paid to the plaintiff and other material breaches of an executory contract for purchase of the premises are cured.

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"(7) Issuance of the writ of restitution, based on a judgment for possession in consequence of the forfeiture of an executory contract for the purchase of the premises, shall foreclose any equitable right of redemption which the purchaser might have or claim in the premises."

For contingent effect and effective date provisions of P.A.2004, No. 105, see the Historical and Statutory Notes following [M.C.L.A. § 600.5714](#).

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Source:

P.A.1961, No. 236, § 5744, added by P.A.1972, No. 120, § 1, Eff. July 1, 1972.

C.L.1970, § **600.5744**.

Prior Laws:

R.S.1846, c. 123, §§ 7, 9, 10, 26.

P.A.1851, No. 76.

C.L.1857, §§ 4980, 4982, 4983, 4999.

P.A.1867, No. 94.

P.A.1869, No. 114.

C.L.1871, §§ 6701, 6703, 6704, 6719.

How. §§ 8290, 8292, 8293, 8308.

C.L.1897, §§ 11159, 11161, 11162, 11177.

P.A.1915, No. 314, c. XXX, §§ 7, 9, 10, 25.

C.L.1915, §§ 13235, 13237, 13238, 13253.

P.A.1917, No. 243.

P.A.1927, No. 373.

C.L.1929, §§ 14970, 14972, 14973, 14988.

P.A.1933, No. 122.

C.L.1948, §§ 600.5619, 600.5625, 600.5628, 600.5673, 630.7, 630.9, 630.10, 630.25.

P.A.1955, No. 111.

P.A.1956, No. 72.

P.A.1959, No. 249, § 1.

P.A.1961, No. 236, §§ 5619, 5625, 5628, 5673.

C.L.1970, §§ 600.5619, 600.5625, 600.5628, 600.5673.

CROSS REFERENCES

Redemption period after foreclosure sale, see [§ 600.3140](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Evictions: A basic roadmap for handling nonpayment actions. Lawrence Shoffner, [82 Mich.B.J. 21 \(Dec. 2003\)](#).

LIBRARY REFERENCES

2000 Main Volume

Landlord and Tenant  311, 317.

[C.J.S. Landlord and Tenant §§ 783 to 786](#).

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RESEARCH REFERENCES

2000 Main Volume

Encyclopedias

[66 Am. Jur. Proof of Facts 3d 267](#), Sufficiency of Manner and Timeliness of Redemption of Real Estate Contract from Foreclosure.

[Mich. Civ. Jur. Vendors and Purchasers § 77](#), Reentry by Seller; Summary Proceedings -- Procedure.

[Mich. Civ. Jur. Vendors and Purchasers § 78](#), Effect on Other Remedies.

Forms

[2 Michigan Court Rules Practice Forms § 33.04](#), Improper Issuance and Execution of Writ of Restitution.

[Michigan SCAO Approved Forms DC 107](#), 6/97 Order of Eviction, Landlord-Tenant/Land Contract.

Treatises and Practice Aids

[5 Michigan Court Rules Practice Text § 4201.8](#), Claims and Counterclaims.

[5 Michigan Court Rules Practice Text § 4202.9](#), Order of Eviction.

[5 Michigan Court Rules Practice Text § 4201.13](#), Order of Eviction.

[5 Michigan Court Rules Practice Text § 4201.14](#), Postjudgment Motions.

[5 Michigan Court Rules Practice Text § 4201.15](#), Appeals from Possessory Judgments.

[Michigan Pleading and Practice § 47:10](#), Writs of Possession or Restitution.

[Michigan Pleading and Practice § 88:09](#), Writ of Restitution.

[Michigan Pleading and Practice § 88:29](#), Judgment for Plaintiff.

[Michigan Pleading and Practice § 88:65](#), Counterclaims.

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[1.](#) Validity of prior law


C.L.1929, § 14988, as amended by P.A.1933, No. 122, changing time for redemption after judgment of restitution, from 30 to 90 days, was not unconstitutional as impairing obligation of land contract entered into before enactment of statute. [Mortgage & Contract Co. v. Sage \(1934\) 253 N.W. 255, 266 Mich. 165](#). Constitutional Law  183

[2.](#) In general



Statute governing summary proceedings for recovery of possession of premises is remedial in nature and should be construed liberally. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458](#). Vendor And Purchaser  298


When a judgment for possession is entered in a landlord's favor, issuance of a writ of restitution is statutorily permitted to allow the property owner to be restored and put in full possession of the premises. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230](#), rehearing denied [602 N.W.2d 577, 461 Mich. 1205](#), on subsequent appeal [638 N.W.2d 747, 465 Mich. 911](#). Landlord And Tenant  317


[3.](#) Notice to quit

Where negotiations for settlement of differences between owners and occupant of realty were being had during period in which occupant claimed to be tenant at will or by sufferance because of owners' tacit consent to occupant's continued tenancy after entry of judgment for restitution of premises to owners, occupant was not entitled to statutory notice to quit before issuance of writ of restitution. [Richardson v. Richardson \(1944\) 15 N.W.2d 660, 309 Mich. 336](#), certiorari denied [65 S.Ct. 912, 324 U.S. 864, 89 L.Ed. 1420](#). Landlord And Tenant  311

[4.](#) Possession right



Even assuming that land contract purchaser filed her Chapter 13 petition prior to expiration of 90-day period when she could redeem property from foreclosure and reinstate land contract, debtor-purchaser could have exercised state law redemption rights only by paying full amount required for redemption under state law prior to expiration of this 90-day redemption period, as extended pursuant to bankruptcy statute; debtor could not assume or reject land contract, unless she properly exercised redemption rights in accordance with state law. [In re Horton, Bkrcty.E.D.Mich.2003, 302 B.R. 198](#). Bankruptcy  3034; Bankruptcy  3106


Where land contract purchaser did not file her Chapter 13 petition until after land contract vendors had foreclosed and two days after state law redemption period had expired, debtor no longer had any interest in subject property on petition date, and automatic stay did not apply to prevent vendors from exercising their state law rights in property. [In re Horton, Bkrcty.E.D.Mich.2003, 302 B.R. 198](#). Bankruptcy  2397(2)

The amount specified in a land contract forfeiture judgment is the only monetary payment that needs to be made to preclude the issuance of a writ of restitution in a proceeding under the Revised Judicature Act; failure to make payments due on the underlying land contract that accrue during the redemption period, after the judgment has been entered, is not a "material breach" under the statute preventing the issuance of the writ if payment is made in an amount provided in the judgment and other material breaches are cured, and such failure will not support issuance of the writ. [Wilson v. Taylor \(1998\) 577 N.W.2d 100, 457 Mich. 232](#). Vendor And Purchaser  299(4)


Although a land contract vendor has the right to possession immediately upon forfeiture (either the 15 days provided by § 600.5728 or a later time if the contract so states), this right can only be enforced after the writ of restitution is


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issued, and not at all if the vendee prevents the writ from issuing by timely paying the redemption price. [Durda v. Chembar Development Corp. \(1980\) 291 N.W.2d 179, 95 Mich.App. 706.](#) Vendor And Purchaser  191; Vendor And Purchaser  298


Under C.L.1915, § 13253, one bringing summary proceedings to obtain possession of premises sublet was not entitled to a judgment of restitution, where the sublessees tendered all sums due, for, while the statute gave a speedy remedy, a lessor took it subject to the right of the tenant to retain the possession of the premises on tender of the rent. [Romeo v. Lupo \(1919\) 175 N.W. 245, 208 Mich. 222.](#) Landlord And Tenant  298(1)

5. Bond


Statute governing summary proceedings to recover possession of premises did not require tenant to file bond to stay proceedings be filed within ten days after the judgment for possession was entered to toll running of period during which writ of restitution could not have been issued. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230,](#) rehearing denied [602 N.W.2d 577, 461 Mich. 1205,](#) on subsequent appeal [638 N.W.2d 747, 465 Mich. 911.](#) Landlord And Tenant  317


In the face of legislative silence on time limit for filing appeal bond in summary proceedings to recover possession of premises, the Supreme Court presumes that the Legislature would insist on a reasonable time limit. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230,](#) rehearing denied [602 N.W.2d 577, 461 Mich. 1205,](#) on subsequent appeal [638 N.W.2d 747, 465 Mich. 911.](#) Landlord And Tenant  315(1)


Trial court's requirement that appeal bond be filed within forty-eight hours of judgment in summary proceeding to recover possession was patently reasonable. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230,](#) rehearing denied [602 N.W.2d 577, 461 Mich. 1205,](#) on subsequent appeal [638 N.W.2d 747, 465 Mich. 911.](#) Landlord And Tenant  315(1)

Under statute governing summary proceedings to recover possession of premises, bond itself must be filed within ten-day period after entry of judgment for possession to toll running of period during which writ of restitution could not be issued; filing application for bond is insufficient. [Sun Valley Foods Co. v. Ward \(1997\) 561 N.W.2d 484, 221 Mich.App. 335,](#) appeal denied [573 N.W.2d 618, 456 Mich. 920,](#) order vacated on reconsideration [586 N.W.2d 231, 457 Mich. 885,](#) motion to dismiss appeal denied [589 N.W.2d 288,](#) reversed [596 N.W.2d 119, 460 Mich. 230,](#) rehearing denied [602 N.W.2d 577, 461 Mich. 1205,](#) on subsequent appeal [638 N.W.2d 747, 465 Mich. 911.](#) Landlord And Tenant  317


6. Payment or cure--In general


Redemption provisions of the summary proceedings statute were designed to afford a defaulting purchaser the opportunity to redeem his interest and save his property. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458.](#) Vendor And Purchaser  185


Land contract vendees in default were not prohibited by fraud from redeeming property, so as to prevent enforcement of vendors' writ of restitution; although vendors and vendors' attorney had doubts regarding whether vendees had money to redeem, vendors and attorney were prepared to accept redemption money if tendered. [Flynn v. Korneffel \(1996\) 547 N.W.2d 249, 451 Mich. 186,](#) rehearing denied [551 N.W.2d 163, 453 Mich. 1201.](#) Vendor And Purchaser  299(1)


Defaulting land contract vendees' placement of default amount in escrow with title insurance company on final day of redemption did constitute redemption, as money was not "paid" to vendors; placement of judgment amount in escrow did not amount to tender, but only offer to close pending disbursement of money by third-party lender. [Flynn v. Korneffel \(1996\) 547 N.W.2d 249, 451 Mich. 186,](#) rehearing denied [551 N.W.2d 163, 453 Mich. 1201.](#) Vendor And Purchaser  299(1)

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To redeem property from foreclosure, funds must be paid to vendor. [Flynn v. Korneffel \(1996\) 547 N.W.2d 249, 451 Mich. 186](#), rehearing denied [551 N.W.2d 163, 453 Mich. 1201](#). Vendor And Purchaser  299(1)


Two checks remitted by person with whom defendants entered into purchase agreement to raise amount necessary to satisfy judgment during redemption period, payable to plaintiff and mortgagee of property and filed with district court, constituted a valid tender of payment to plaintiff, and thus defendants, land contract vendees, did not forfeit any interest in property. [Tenney v. Springer \(1982\) 328 N.W.2d 566, 121 Mich.App. 47](#). Vendor And Purchaser  170


To redeem property from foreclosure, purchasers may tender payment either to vendors, to court, or to vendors' attorney as their agent. [Karakas v. Dost \(1976\) 240 N.W.2d 743, 67 Mich.App. 161](#). Vendor And Purchaser  299(1)


Where the vendor had secured a judgment of restitution upon purchaser's default, an offer by purchaser through her attorney to pay the balance due thereunder upon delivery of the deed did not constitute a valid "tender" for the redemption. [Kaiser v. Weber \(1942\) 4 N.W.2d 29, 301 Mich. 609](#). Vendor And Purchaser  299(1)


7. ---- Time for payment or cure


Under Michigan law, date on which redemption period expires is cut-off date for exercise of debtor/purchaser's right to pay arrearage in full and reinstate land contract. [In re Horton, Bkrtcy.E.D.Mich.2003, 302 B.R. 198](#). Vendor And Purchaser  185

Under Michigan summary forfeiture procedure for enforcing vendor's land contract rights, date on which applicable period of redemption expires is cut-off date for exercise of debtor/purchaser's right to cure arrearages and reinstate land contract. [In re Carr, Bkrtcy.E.D.Mich.1985, 52 B.R. 250](#). Vendor And Purchaser  298

Taxes and insurance premiums paid by vendor were not to be added to original selling price of \$61,000, for purposes of determining purchasers' redemption period under statute establishing period based on purchase price in summary proceedings for recovery of possession of premises. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458](#). Vendor And Purchaser  185


For purposes of establishing the proper redemption period under statute governing summary proceedings for recovery of possession of premises, the term "purchase price" means the original selling price for the property as set forth on the face of the parties' land contract. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458](#). Vendor And Purchaser  185


Although a land contract may allocate responsibility for taxes and insurance to the purchasers and allow the vendors to pay any unpaid taxes and insurance premiums and then add them to the purchasers' unpaid balance, those provisions do not alter the actual sale price of the property; therefore, those costs may not be included in the "purchase price" for purposes of statute establishing redemption period in summary proceedings for recovery of possession of premises based on purchase price. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458](#). Vendor And Purchaser  185

Court may not simply look to the "principal balance due" to determine whether 50% or more of the purchase price has been paid, for purposes of statute establishing the appropriate redemption period on the basis of the percentage paid against the purchase price; while the difference between the unpaid principal balance and the purchase price often will reflect the amount paid against the purchase price, where taxes and insurance premiums have been added to the outstanding principal balance, subtracting the unpaid balance from the purchase price will not yield the amount of equity acquired by the purchaser in the property. [Entingh v. Grooters \(1999\) 600 N.W.2d 415, 236 Mich.App. 458](#). Vendor And Purchaser  185


Although right to redeem is statutory, court may exercise its discretion in unusual circumstances such as fraud to


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extend the redemption period. [Flynn v. Korneffel \(1996\) 547 N.W.2d 249, 451 Mich. 186](#), rehearing denied [551 N.W.2d 163, 453 Mich. 1201](#). Vendor And Purchaser  299(1)


Land contract purchaser "paid" amounts owing "within the time provided" when he mailed personal check for amounts stated in judgments of possession to vendors' lawyer on last day of prescribed time and thus was entitled to have quashed a writ of restitution issued in summary proceedings to recover property because of nonpayment of money. [Birznieks v. Cooper \(1979\) 275 N.W.2d 221, 405 Mich. 319](#). Vendor And Purchaser  298


8. ---- Tolling of time for payment or cure

Where debtor/purchaser filed his Chapter 13 petition before 90th day of his redemption period under Michigan summary forfeiture procedure for enforcing vendor's land contract rights, automatic stay tolled expiration of that redemption period; thus, if debtor's plan proposed cure of land contract default in reasonable period of time and was otherwise confirmable, debtor could cure default and reinstate original terms of land contract. [In re Carr, Bkrctcy.E.D.Mich.1985, 52 B.R. 250](#). Bankruptcy  2395


Redemption tolling provision of the statute governing writs of restitution following a judgment of possession is intended to give the tenant and vendee a last chance to avoid forfeiture. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230](#), rehearing denied [602 N.W.2d 577, 461 Mich. 1205](#), on subsequent appeal [638 N.W.2d 747, 465 Mich. 911](#). Landlord And Tenant  317


Tenant tolls the redemption period by filing a claim of appeal or motion for a new trial within ten days after the entry of judgment in summary proceedings to recover possession of premises; bond, however, is not required to be filed within the ten-day period. [Sun Valley Foods Co. v. Ward \(1999\) 596 N.W.2d 119, 460 Mich. 230](#), rehearing denied [602 N.W.2d 577, 461 Mich. 1205](#), on subsequent appeal [638 N.W.2d 747, 465 Mich. 911](#). Landlord And Tenant  315(1)

Order dismissing appeal to supreme court pursuant to stipulation entered into by corporate purchaser appealing from judgment of restitution in favor of assignee of vendor was not "determination" within β 600.5673 (repealed; see, now, β **600.5744**) providing that no writ of restitution shall issue within 90 days after appeal was determined by supreme court; rather, stipulation indicated satisfaction with circuit court's judgment of restitution, so that redemption period expired 90 days after that judgment. [Parrish v. Michigan Properties Corp. \(1965\) 138 N.W.2d 517, 2 Mich.App. 49](#). Vendor And Purchaser  299(4)

Where corporation tenant did not appeal from judgment against it in summary proceeding within statutory period though individual officers sued did appeal, landlord had right to writ of restitution against corporation. [Oppenheim v. National Sur. Co. \(1934\) 253 N.W. 204, 266 Mich. 31](#). Landlord And Tenant  317

9. ---- Refusal of payment or cure


If purchasers failed to tender payment to redeem property from judgment of restitution because vendors prevented it or indicated that they would not accept it, failure to tender payment did not bar redemption. [Karakas v. Dost \(1976\) 240 N.W.2d 743, 67 Mich.App. 161](#). Vendor And Purchaser  299(1)


The statements made by vendor's attorney, in answer to offer of purchaser's attorney to redeem property after judgment of restitution, that he believed C.L.1929, β 14988, as amended by P.A.1933, No. 122, providing for a 90-day period of redemption was unconstitutional, was not a waiver of proper legal tender or an estoppel against raising objection to the legality thereof. [Kaiser v. Weber \(1942\) 4 N.W.2d 29, 301 Mich. 609](#). Vendor And Purchaser  299(1)

10. Waiver of right of redemption


Judgment for possession is subject to redemption rights of purchaser under land purchase contract or tenant and no

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agreement between parties can deprive purchaser or tenant of his statutory right to cure default under this section. [Birzniaks v. Cooper \(1979\) 275 N.W.2d 221, 405 Mich. 319](#). Vendor And Purchaser  299(1)

Corporate purchaser against which judgment of restitution had been entered in favor of vendor's assignee waived right of redemption by failing to pay amount due on the judgment and costs within 90 days after entry of the judgment. [Parrish v. Michigan Properties Corp. \(1965\) 138 N.W.2d 517, 2 Mich.App. 49](#). Vendor And Purchaser  299(4)

11. Time for issuance of writ

Writ of restitution issued after entry of judgment of forfeiture in land contract forfeiture proceeding was void where it was issued and executed at time when 90 days allowed in the summary proceeding had not expired and at a time when the matter was appealed and a stay bond duly filed and noticed. [Reinecke v. Sheehy \(1973\) 209 N.W.2d 460, 47 Mich.App. 250](#). Vendor And Purchaser  299(4)

12. Judgment for possession

"Judgment for possession," for purposes of statutes governing summary proceedings seeking possession of real property, is a judgment that entitles the plaintiff to possession of the premises and sets the amount due under the contract, which the defendant must pay to preclude issuance of a writ of restitution. [J.A.M. Corp. v. AARO Disposal, Inc. \(1999\) 600 N.W.2d 617, 461 Mich. 161](#). Landlord And Tenant  293.1

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