Teresa Marie Lanning, Petitioner,	MICHIGAN TAX TRIBUNAL
v	MOAHR Docket Nos. 17-004014 & 17-004027
City of Grand Rapids, Respondent.	Presiding Judge David B Marmon

ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION IN DOCKET NO. 17-004014

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION IN DOCKET NO. 17-004027

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION IN DOCKET NO. 17-004014

ORDER PARTIALLY DISMISSING DOCKET NO. 17-004014

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION IN DOCKET NO. 17-004027

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on March 21, 2019. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On April 10, 2019, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that the ALJ's basis for deciding these consolidated cases is erroneous because the conveyances were not within any of the identified exceptions to uncapping. MCL 552.102 specifically states that a husband and wife who own real estate as tenants by the entireties shall, upon becoming divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce. Lanning and Prevost divorced on July 29, 2008, and the words "jointly own" as used in the Consent Judgment do not satisfy the express declaration of

joint tenancy. Without such declaration, a joint tenancy cannot be created, and Lanning and Prevost owned the properties as tenants in common when they were conveyed to Lanning. The ALJ had no legal basis to find that Lanning and Prevost held title to the properties as anything other than tenants in common as of the date of conveyance because the Order for Clarification wasn't entered until July 28, 2017, well after the properties had been conveyed to Lanning by deed. Respondent submits that unless otherwise explicitly specified, orders are effective when signed by the judge. Further, the Kent County Circuit Court had no authority to grant Lanning and Prevost's Motion for Clarification because it was time barred. If the Tribunal were to adopt the POJ as a final decision, divorced parties could avoid uncapping at any time after the divorce, and such a ruling would open the floodgates for litigation. Respondent also notes that the TV values the ALJ lists in the POJ are from 2016 and do not include the 1.009 inflation rate multiplier for the 2017 tax year.

On April 24, 2019, Petitioner filed a response to Respondent's exceptions. In the response, Petitioner states that Respondent's exceptions are nothing more than an attempt to relitigate a fact that has already been judicially decided: Teresa Lanning and Brian Prevost were joint tenants following their 2008 divorce. The Kent County Circuit Court's ruling in this regard is binding and dispositive. Respondent is also incorrect about the retroactive effect of the Order for Clarification of Consent Judgment of Divorce. The Kent County Circuit Court clarified the ambiguous terms of the Consent Judgment in that order and ruled that Petitioners intended to be a joint tenants at the time of their divorce, as well as in subsequent years. As a result, the order properly assigned a joint tenancy dating back to the July 29, 2008 Consent Judgment.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge ("ALJ") properly considered the testimony and evidence provided in the rendering of the POJ. Respondent contends that the ALJ had no legal basis to find that Lanning and Prevost held title to the properties as anything other than tenants in common as of the date of conveyance because the Order for Clarification wasn't entered until July 28, 2017. In rendering his decision, however, the ALJ did not rely on the Order for Clarification; the ALJ found that both the original Consent Judgment of Divorce and the Order for Clarification were "inartfully drafted to indicate the actual ownership 'determined'" and rendered his own interpretation as a result. Specifically, the ALJ found that the affidavit filed with Petitioner's motion for clarification verified an intent to create an indestructible joint tenancy with rights of survivorship. Given the available evidence, the Tribunal cannot conclude that the ALJ erred in this determination. The ALJ did err in recording the correct taxable value for each of the subject parcels, but this error is de minimis, and had no impact on his determination that the values were not properly uncapped for the tax year at issue.

Given the above, the Tribunal finds good cause to justify the modifying of the POJ with respect to calculation of taxable value only.[1] As such, the Tribunal modifies the POJ

[1] See MCL 205.762.

and adopts the modified POJ as the Tribunal's final decision in this case.[2] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ, as modified herein, in this Final Opinion and Judgment. As a result:

a. The property's TV, as established by the Board of Review for the tax year(s) at issue, is as follows:

Parcel Number	Year	TV
41-18-07-105-004	2017	$36,158
41-18-07-105-005	2017	$51,877
41-18-07-105-006	2017	$68,035
41-18-07-105-010	2017	$33,447
41-18-07-105-050	2017	$114,437
41-18-07-105-051	2017	$86,907
41-14-31-179-025	2017	$50,244
41-14-31-183-010	2017	$56,665
41-14-31-254-005	2017	$43,623
41-14-31-255-007	2017	$43,713
41-14-31-256-013	2017	$38,546

b. The property's final TV, for the tax year(s) at issue, is as follows:

Parcel Number	Year	TV
41-18-07-105-004	2017	$31,416
41-18-07-105-005	2017	$47,454
41-18-07-105-006	2017	$64,071
41-18-07-105-010	2017	$27,695
41-18-07-105-050	2017	$90,474
41-18-07-105-051	2017	$76,914
41-14-31-179-025	2017	$41,889
41-14-31-183-010	2017	$48,031
41-14-31-254-005	2017	$38,546
41-14-31-255-007	2017	$36,526
41-14-31-256-013	2017	$32,592

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition in Docket No. 17-004014 is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition in Docket No. 17-004027 is GRANTED.

[2] See MCL 205.726.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition in Docket No. 17-004014 is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Petitioner's appeal of Parcel No. 41-14-31-179-020 in Docket No. 17-004014 is DISMISSED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition in Docket No. 17-004027 is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[3] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, and (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of

[3] See MCL 205.755.

Appeals.

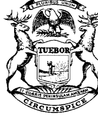
A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[4] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[5] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[6] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[7]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[8] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[9] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[10]

By ______________________________

Entered: May 13, 2019
ejg

[4] See TTR 261 and 257.
[5] See TTR 217 and 267.
[6] See TTR 261 and 225.
[7] See TTR 261 and 257.
[8] See MCL 205.753 and MCR 7.204.
[9] See TTR 213.
[10] See TTR 217 and 267.



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Teresa M Lanning et al,
Petitioner,

v

City of Grand Rapids,
Respondent.

MICHIGAN TAX TRIBUNAL

MAHS Docket Nos. 17-004014 & 17-004027[1]

Presiding Judge
Peter M. Kopke

ORDER CONSOLIDATING MAHS DOCKET NOS. 17-004014 & 17-004027

PROPOSED ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION IN MAHS DOCKET NO. 17-004014

PROPOSED ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION IN MAHS DOCKET NO. 17-004027

PROPOSED ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION IN MAHS DOCKET NO. 17-004014

PROPOSED ORDER PARTIALLY DISMISSING PETITIONER'S APPEAL IN MAHS DOCKET NO. 17-004014

PROPOSED ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION IN MAHS DOCKET NO. 17-004027

PROPOSED OPINION AND JUDGEMENT

INTRODUCTION

Petitioner filed petitions on July 28, 2017, appealing Respondent's partial uncapping of the subject properties' taxable value ("TV") under MCL 211.27a(3) for the 2017 tax year.

Prehearing Conferences were conducted on November 19, 2018, resulting in the scheduled filing of a stipulation of facts and briefs in support of the parties claims.

Pursuant to the November 19, 2018 Scheduling Orders, the parties filed Stipulations of Facts ("Stipulation") on February 4, 2019, providing the following statement of facts that

[1] The Tribunal entered an Order on November 7, 2018, consolidating MAHS Docket No. 17-004014 with MAHS Docket Nos. 17-004015, 17-004017, 17-004019, 17-004020, 17-004022, and 17-004026.

have been combined and are adopted as the Tribunal's "Findings of Fact" in these cases:[2]

1. These consolidated appeals involve the partial uncapping of 12 properties' TV.
2. Of the consolidated cases, 11 properties are residential, and one is commercial.

    a. Residential

i.	742 College Avenue, SE	(Parcel No. 41-14-31-256-013)
ii.	733 Madison Avenue, SE	(Parcel No. 41-14-31-183-010)
iii.	716 Morris Avenue, SE	(Parcel No. 41-14-13-255-007)
iv.	648 Prospect Avenue, SE	(Parcel No. 41-14-31-179-025)
v.	418 Thomas Avenue, SE	(Parcel No. 41-14-31-254-005)
vi.	148 Burton Avenue, SE	(Parcel No. 41-18-07-105-004)
vii.	150 Burton Avenue, SE	(Parcel No. 41-18-07-105-005)

---

[2] The parties attached to the Stipulations the following exhibits:

MAHS Docket No. 17-004014

Exhibit A – Copy of the Consent Judgment of Divorce issued July 29, 2008.
Exhibit B – Copy of Quit Claim Deed transferring Prevost's interest in the properties to Petitioner dated September 22, 2016.
Exhibit C – Copy of Order for Clarification of Consent Judgment of Divorce issued July 28, 2017.

MAHS Docket No. 17-004027

Exhibit A – Copy of the Consent Judgment of Divorce issued July 29, 2008.
Exhibit B – Copy of Quit Claim Deed transferring Prevost's interest in the properties to Petitioner dated September 22, 2016.
Exhibit C – Copy of Quit Claim Deed transferring the properties from Petitioner to Petitioner and Prevost dated November 23, 2016, and providing, in pertinent part, "[t]his deed is being recorded for the purpose of correcting a Quit Claim Deed dated September 22, 2016."
Exhibit D – Copies of letter from Griffin Properties to Respondent dated February 1, 2017 and a copy of letter from Transnation Title Agency to "Whom it May Concern" dated February 2, 2017. The Griffin Properties letter provides, in pertinent part:

> "Due to a clerical error the ownership of 2007 Jefferson SE & 2012 Jefferson SE were transferred from Brian Prevost to Teresa Lanning in September 2016. Neither [Teresa] Lanning [n]or Brian Prevost intended for the property . . . to be transferred."

The Transnation Title Agency letter provides, in pertinent part:

> "These two properties were not intended to be part of said Quit Claim Deed by the Grantor or Grantee. A corrective Quit Claim Deed was recorded on November 28, 2016 to deed the properties to the original owners, Teresa Marie Lanning and Brian Joseph Prevost. It was in . . . error the two above referenced properties were included in the legal description of the original Quit Claim Deed."

Exhibit E – Copy of February 2, 2017 Transnation Title Agency letter and a copy of Order for Clarification of Consent Judgment of Divorce issued July 28, 2017.

viii. 200 Burton Avenue, SE (Parcel No. 41-18-07-105-006)
ix. 2022 Francis Avenue, SE (Parcel No. 41-18-07-105-010)
x. 2007 Jefferson SE (Parcel No. 41-18-07-105-050)
xi. 2021 Jefferson SE (Parcel No. 41-18-07-105-051)

b. Commercial

i. 635 Madison Avenue, SE (Parcel No. 41-14-31-179-020)

3. All of the 12 properties **were originally conveyed** to Petitioner, Teresa Lanning ("Lanning"), and her then husband, Petitioner, Brian Prevost ("Prevost"), **as husband and wife**.
4. In July of 2008, Lanning and Prevost divorced. Lanning and Prevost were unrepresented by attorneys in their divorce and, as in pro per parties, prepared a Consent Judgment of Divorce which provided, in part:

> Paragraph V – Real Property Settlement of the Consent Judgment of Divorce (attached as Exhibit A) states in relevant part the following:
>
> ". . . Plaintiff and Defendant would like to **jointly own** and split the profits of the 19 **residential** properties (if any) until they are sold, at which time parties shall split the profits (if any) **50/50**."

5. On September 22, 2016, Prevost executed a Quit Claim Deed (attached as Exhibit B) **to convey Prevost's interest in a list of properties** identified in Schedule A of the September 22, 2016 Quit Claim Deed, which included the 12 properties at issue in these appeals to Lanning. The consideration listed on the Quit Claim Deed was $1.00. The Quit Claim Deed stated:

> This deed is given in complete and total satisfaction of **any and all interest** Brian Joseph Prevost may have in the subject property pursuant to any liens created in Divorce Decree #08-02277-DO.

6. On November 23, 2016, Lanning executed a Quit Claim Deed (attached as Exhibit C) which conveyed the two (2) subject properties back to herself and Prevost. The November 23 Quit Claim Deed stated:

> This deed is being recorded for the purpose of correcting a quit claim deed dated September 22, 2016 and recorded October 3, 2016 in Instrument #291610030086715 which erroneously included Parcels 41-18-07-105-050 and 41-18-07-105-051 as described in attached legal description hereto.

7. Based upon the September 22, 2016, Quit Claim Deed, the City partially uncapped the TV of the 12 properties at issue in these cases by 50%.

8. On February 1, 2017, Griffin Properties wrote a letter the City of Grand Rapids, Assessor's Office (attached as Exhibit D) which stated:

    "Due to a clerical error the ownership of 2007 Jefferson SE & 2021 Jefferson SE were transferred from Brian Prevost to Teresa Lanning in September 2016. Neither Tracy Lanning or Brian Prevost intended for the properties (2007 Jefferson SE & 2021 Jefferson SE) to be transferred."

9. On February 2, 2017, Transnation Title Agency wrote a letter regarding 2007 & 2021 Jefferson Dr SE (Exhibit E) which stated:

    "A Quit Claim Deed was recorded on October 3, 2016 between Brian Joseph Prevost as grantor and Teresa Marie Lanning as grantee for multiple properties including the above referenced properties. These two properties [i.e., Parcel Nos. 41-18-07-105-050 and 41-18-07105-051] were not intended to be part of said Quit Claim Deed by the grantor or grantee. A corrective Quit Claim was recorded on November 28, 2016 to deed the properties to the original owners, Teresa Marie Lanning and Brian Joseph Prevost. It was in an error the two above referenced properties were included in the legal description of the original Quit Claim Deed."

10. On February 17, 2017, timely written appeals were filed the City of Grand Rapids Assessor's office for all 12 parcels. All 12 appeals were denied at the 2017 March Board of Review. The Michigan State Tax Commission Transfer Guidelines was the legal basis for the denials.
11. **On July 28, 2017**, counsel for Lanning filed the instant actions challenging the City Assessor's partial uncapping of the properties' taxable value.
12. On July 28, 2017, an Order for Clarification of Consent Judgment of Divorce (attached as Exhibit C) entered. The July 28, 2017 Order for Clarification read as follows:

    "IT IS ORDERED that the Consent Judgment of Divorce entered in this matter on July 29, 2008, is hereby clarified to resolve any potential ambiguity in the following respect:

    PARAGRAPH V – REAL PROPERTY SETTLEMENT is hereby clarified and construed to reflect the parties' agreement that the nineteen **residential** properties described in the Consent Judgment of Divorce as **Joint Tenants** until such property is sold or otherwise conveyed by or between Plaintiff and Defendant."

    [Emphasis added.]

Although the November 19, 2018 Scheduling Order provided for the filing of briefs, Lanning and Prevost filed motions on February 21, 2019, requesting the Tribunal to grant summary disposition in favor of Lanning and Prevost under MCR 2.116(C)(10). Respondent has not filed a response to Petitioner's Motions. Respondent also filed motions for summary disposition on February 21, 2019 under MCR 2.116(C)(10). Lanning and Prevost filed responses to Respondent's Motions on March 7, 2019.

PETITIONER'S CONTENTIONS

In her Motions,[3] Lanning and Prevost contend that:

MAHS Docket No. 17-004014

(i) Respondent's partial uncappings were "based upon its erroneous interpretation of a potentially ambiguous property settlement provision within a Judgment of Divorce," (ii) "[t]o the extent any question existed regarding the property settlement provision in the Judgment of Divorce, the **exclusive jurisdiction** to resolve the question lied with the Circuit Court" and "the Circuit Court clarified its order, with retroactive effect, in a manner which leaves no doubt that the City's . . . interpretation of the Judgment of Divorce was incorrect," and (iii) "[b]ecause there is **no** dispute in the record that the subject transfers were between joint tenants, the transfers were not subject to uncapping." [Emphasis added.]

---

[3] Petitioner attached to the Motions the following exhibits:

MAHS Docket No. 17-004014

Exhibit A – Copy of the Consent Judgment of Divorce issued July 29, 2008.
Exhibit B – Copy of Quit Claim Deed transferring Prevost's interest in the properties to Petitioner dated September 22, 2016.
Exhibit C – Copy of Verified Motion for Clarification of Consent Judgment of Divorce dated July 20, 2017, with attached affidavit dated July 21, 2017.
Exhibit D – Copy of Order for Clarification of Consent Judgment of Divorce issued July 28, 2017.

Petitioner's other exhibits included copies of the case law cited in Petitioner's Brief.

MAHS Docket No. 17-004014

Exhibit A – Copy of the Consent Judgment of Divorce issued July 29, 2008.
Exhibit B – Copy of Quit Claim Deed transferring Prevost's interest in the properties to Petitioner dated September 22, 2016.
Exhibit C – Copy of Quit Claim Deed transferring the properties from Petitioner to Petitioner and Prevost dated November 23, 2016, and providing, in pertinent part, "[t]his deed is being recorded for the purpose of correcting a Quit Claim Deed dated September 22, 2016."
Exhibit D – Copy of February 1, 2017 letter from Griffin Properties to Respondent.
Exhibit E - Copy of February 2, 2017 letter from Transnation Title Agency to "Whom it May Concern."

Petitioner's other exhibits included copies of the case law cited in Petitioner's Brief.

MAHS Docket No. 17-004027

(i) Respondent “uncapped the properties with unfounded reliance upon a deed containing a clerical error – the deed was supposed to transfer title to thirteen properties, but inadvertently described fifteen properties,” (ii) “[t]itle to the subject properties was never conveyed due to lack of delivery, lack of acceptance, and, simply lack of intent, by either party to convey title,” (iii) “[t]he City bears the burden to prove transfer of ownership and cannot meet its burden by relying upon the September 22 Quit Claim Deed.” [Emphasis added.]

In her Responses to Respondent’s Motions,[4] Petitioner contends:

MAHS Docket No. 17-004014

(i) Respondent **ignores the plain language** of MCL 552.102 **and fails to appreciate** that the Kent County Circuit Court’s July 28, 2017 Order for Clarification of Consent Judgment of Divorce . . . has retroactive effect to the 2008 divorce decree,” (ii) “Petitioner is **not** seeking to reform the September 22, 2016 Quit Claim Deed,” and (iii) “the property Respondent alleges to be a commercial unit does **not** meet the General Property Tax Act definition of ‘commercial real property.’” [Emphasis added.]

MAHS Docket No. 17-004027

(i) “the November 23, 2016 corrective deed was **not** executed with the intent of avoiding tax consequences,” (ii) “Petitioners do **not** request that this Court exercise any equitable jurisdiction over the deeds at issue in this case . . . . [as] [t]he deeds do **not** need to be reformed,” and (iii) “the City partially uncapped the property taxes **despite** Ms. Lanning and Mr. Prevost being **joint tenants** at the time of the September 22, 2016 deed.’” [Emphasis added.]

RESPONDENT’S CONTENTIONS

In its Motion,[5] Respondent contends:

---

[4] Petitioner attached to the Responses the following exhibits:

> Copies of case law cited in the Response. The case cited is, however, an unpublished decision that is not precedentially binding, as provided by MCR 7.215(C).

[5] Respondent attached to the Motions the following exhibits:

MAHS Docket No. 17-004014

> Exhibit D – A copy of the 2018 Assessment Change Notice for Parcel No. 41-14-31-179-020 (635 SE Madison Ave) indicating that the property is classified as 201-Commercial Improved.

MAHS Docket No. 17-004014

(i) "[b]ecause Petitioner **failed** to meet the statutory petition filing deadline, the Tax Tribunal **lacks** jurisdiction to consider Lanning's petition for the property located at 635 Madison, SE and the Tax Tribunal must dismiss it," (ii) "[b]ased on the law and the language used in the warranty deeds, Lanning and Prevost owned all of the subject properties as tenants by the entireties," (iii) "[t]he language in statute MCL 552.102 is **unambiguous** in that upon divorce the parties hold title to any real estate as tenants in common and . . . . [t]he statute does **not** create a safe harbor that would allow divorced individuals to hold property as joint tenants **in an effort to avoid uncapping of the taxable value all together**," (iv) "[e]ven if the parties intended to hold the properties as joint tenants, the language of the statute clearly does **not** provide the Court with the authority to transform the parties' ownership interest in the properties from a tenancy in common to a joint tenancy," (v) "[t]he Property Transfer Affidavits signed by Lanning alleged the properties were exempt from uncapping because the transfers were from on spouse to the other spouse . . . . [and] [a]t the time of transfer, Lanning and Prevost had been divorced for over eight years and were no longer spouses," (vi) "a transfer from a former spouse to a former spouse is considered a transfer of ownership and therefore the City properly uncapped the property's by 50%," and (vii) "[t]he Order for Clarification entered on July 28, 2017, **well after Prevost had quit claimed his interest in all of the properties to his former wife**, Lanning . . . . [and] [t]he quit claim deeds were **never** reformed to reflect the alleged error . . . . [e]ven so, the Tribunal in *Lewallen v Township of Porter*, MTT Docket No. 431811, May 4, 2012 found 'that it cannot by law 'reform' the deed consistent with the intent of the parties . . . . [as] [r]eformation is an equitable remedy . . . . [and] [t]he Tribunal's powers . . . do not include powers of equity." [Emphasis added.]

MAHS Docket No. 17-004027

(i) "Prevost quit claimed his interest in the subject properties to Lanning . . . . [and] [t]he quit claim deed was **recorded** with the Kent County Register of Deeds on October 3, 2016," (ii) "Petitioners attempt to argue that the 'corrective' quit claim deed . . . . should

---

Exhibit E – Copies of the Warranty Deeds transferring the properties to Petitioner and Prevost as husband and wife.
Exhibit F – Copies of the Property Transfer Affidavits.

Respondent's other exhibits include copies of case law cited in Respondent's Brief and "excerpts" from the Michigan State Tax Commission ("STC") *Transfer of Ownership and Taxable Value Uncapping Guidelines* dated March 31, 2001

MAHS Docket No. 17-004027

Exhibit D – Copy of Property Transfer Affidavit dated November 23, 2016.

Respondent's other exhibits include copies of case law cited in Respondent's Brief and Michigan Land Title Standard 3.3.

apply retroactively to nullify the uncapping event resulting from the September 22, 2016, quit claim deed, because the parties mistakenly included the properties," (iii) "[t]he 'corrective' quit claim did **not** correct any legal description . . . because the legal description in the original quit claim dated September 22, 2016 and the 'corrective' quit claim deed **remained exactly the same**," (iv) "MCL 565.451d allows a party to file an affidavit with the register of **deeds to correct scrivener errors or omissions** . . . [and] '[i]n this case Petitioner's filed a 'corrective deed' **not** to correct a scrivener error, faulty description or omission . . . . [rather] Petitioners' 'corrective' quit claim deed **changed the grantees and the nature of their title**, and therefore, MCL 565.451d is **inapplicable**," (v) "the Tribunal in *Lewallen v Township of Porter*, MTT Docket No. 431811, May 4, 2012, found 'that the Michigan Land Title Standards clearly concludes that a 'substantial change in the name of the grantee' cannot be accomplished by executing a subsequent corrective instrument,'" (vi) "[i]t is Respondent's position that the **original** quit claim deed dated September 22, 2016, **required** uncapping of the properties under MCL 211.27a(3) **and Petitioners attempt** to use a 'corrective' quit claim deed to correct the alleged mistake to avoid tax consequences is **not** authorized by statute," and (vii) "[i]n this case Petitioners' 'corrective' deed did **not** involve the correction of a minor error or omission in the property description **and based on the relevant caselaw cited herein**, the Tribunal has **no** authority to reform the deed as a result of Petitioners alleged mistake to avoid the uncapping." [Emphasis added.]

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition, thus the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[6]

With respect to the Motions at issue, MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[7] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make

[6] See TTR 215.
[7] See *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996) (citations omitted).

> out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
>
> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings[] but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[8]

Further, "[a] genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[9] However, the Tribunal is not, in evaluating whether a factual dispute exists to warrant trial, "permitted to assess credibility or to determine facts on a motion for summary judgment."[10] Rather, the Tribunal's task "is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[11]

CONCLUSIONS OF LAW

Having given careful consideration to the case files, the Motions, and the Responses, the Tribunal finds that:

1. the consolidation of the cases is appropriate as the parties are the same, the cases involve common questions of fact and law, and the key evidence in each

---

[8] *Id*. at 361-363 (Citations omitted).
[9] See *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).
[10] See *Cline v Allstate Ins Co*, unpublished opinion *per curiam* of the Court of Appeals issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).
[11] *Id.*

case is the September 22, 2016 quit claim deed transferring the properties at issue from Prevost to Lanning;[12] and,

2. the partially granting of each Motion in MAHS Docket No. 17-004014 and the granting of Petitioner's Motion in MAHS Docket No. 17-004027 is warranted at this time.

More specifically, the issue in these consolidated cases is whether the TV exceeds the amount provided by MCL 211.27a.[13] In that regard, MCL 211.27a(2) provides that a property's taxable value is the lesser of the property's state equalized value or capped taxable value and a property's capped taxable value is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year's taxable value, physical losses to the property, the rate of inflation and physical additions to the property including omitted property (i.e., property not previously assessed). MCL 211.27a(3) also provides "[u]pon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."

With respect to transfers of ownership, MCL 211.27a(7) provides, in pertinent part:

> Transfer of ownership does **not** include the following . . .
>
> (i) A transfer creating or **terminating a joint tenancy** between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. **A joint owner at the time of the last transfer of ownership of the property is an original owner of the property**. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse. [Emphasis added.]

---

[12] Notwithstanding the consolidation of the cases, this Order will address each Motion as the issues presented in the Motions, although essentially the same, have slight differences, specifically relating to the delivery and acceptance of the September 22, 2016 deed in MAHS 17-004027 relative to Parcel Nos. 41-18-07-105-050 and 41-18-07-105-051, as indicated herein.

[13] Although the petitions filed in these cases also requested a reduction of the properties' SEVs, the petitions each indicated that Lanning and Prevost were appealing taxable value only. Further, Lanning and Prevost filed, albeit untimely, Notices of No Valuation Disclosure in each case on September 20, 2018. See the March 1, 2018 Prehearing General Call and Order of Procedure and TTR 237(2) and (3). Unfortunately, Lanning and Prevost's prehearing statements also indicated an SEV amount in dispute. As a result, the Prehearing Conference conducted in the consolidated cases on November 19, 2018, commenced as a show cause hearing given Lanning and Prevost's failure to timely file valuation disclosures and Lanning and Prevost explained that their valuation disclosures were not timely filed because they are appealing TV only and that the indication of AV/SEV in dispute was in error. As such, the only issue raised in these cases relates to the uncapping of the properties' TV only. See the November 19, 2018 Summary of Prehearing Conference.

Finally, a proceeding before the Tax Tribunal is original, independent, and de novo and the Tribunal's factual findings are to be supported by competent, material, and substantial evidence.[14]

Here, Lanning and Prevost claim that:

1. the transfer of the properties' ownership in 2016 in MAHS 17-004014 was exempt from uncapping as the transfers terminated a joint tenancy; and,

2. there was no transfer of ownership as to the properties at issue in MAHS Docket No. 17-004027 (i.e., Parcel Nos. 41-18-07-105-050 and 41-18-07-105-051) "due to lack of delivery, lack of acceptance, and, simply lack of intent, by either party to convey title" to the properties at issue and that Respondent "bears the burden to prove transfer of ownership and cannot meet its burden by relying upon the September 22 Quit Claim Deed."

Before addressing those claims, the Tribunal is required to address, as a preliminary matter, Respondent's claim that the Tribunal has no authority to consider Lanning's uncapping appeal relative to Parcel No. 41-14-31-179-020 (635 Madison Avenue SE). More specifically, Respondent contends that the Petition including that appeal was not timely filed (i.e., on or before May 31, 2017) because the property is classified as commercial real. In response, Lanning argues that the appeal was timely filed because the property, although admittedly classified as commercial real, "does not meet the definition of commercial real property" under MCL 211.34c(b). Said argument is, however, erroneous, as MCL 205.735a(6) provides, in pertinent part:

> The jurisdiction of the tribunal in an assessment dispute **as to property classified** under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, **as commercial real property**, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition **on or before May 31 of the tax year involved**. [Emphasis added.]

MCL 211.34c(6) also provides, in pertinent part:

> An owner of any assessable property **who disputes the classification** of that parcel **shall** notify the assessor **and may** protest the assigned classification to the March board of review. An owner or assessor **may appeal the decision of the March board of review** by filing a petition **with the state tax commission** not later than June 30 in that tax year. The state tax commission shall arbitrate the petition based on the written petition and the written recommendations of the assessor and the state

[14] See MCL 205.735a(2). See also *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

> tax commission staff. An appeal may **not** be taken from the decision of the state tax commission regarding classification complaint petitions and the state tax commission's determination is final and binding for the year of the petition. [Emphasis added.]

Notwithstanding the prohibition on appealing a decision rendered by the Michigan State Tax Commission ("STC") on a property's classification, the Michigan Supreme Court provided in *Midland Cogeneration Venture Ltd P'ship v Naftaly*:[15]

> STC property-classification decisions are final decisions of an administrative agency that are quasi-judicial in nature and affect private rights. Consequently, article 6, § 28 of the Michigan Constitution guarantees judicial review of them, and this guarantee may not be jettisoned by statute. Accordingly, because the final sentence of MCL 211.34c(6) **precludes** judicial review of STC classification decisions, it **violates** article 6, § 28 of the Michigan Constitution. **We declare that sentence unconstitutional and sever it**, leaving the remainder of MCL 211.34c(6) in full force and effect.
>
> **The circuit courts have subject matter jurisdiction over appeals of a decision of the STC regarding property classifications**. Plaintiffs may appeal the decisions in the cases before us in the circuit court for the county of which plaintiffs are residents or the circuit court for Ingham County. [Emphasis added.]

As such, the Tribunal has no authority to consider or otherwise change the property's classification,[16] as said authority is reserved first to the STC and then the circuit courts. More importantly, the plain language of MCL 205.735a(6) clearly indicates that the Tribunal's authority over a property classified as commercial real is dependent on the filing of a petition "on or before May 31 of the tax year involved."[17] As a result, the July

---

[15] See *Midland Cogeneration Venture Ltd P'ship v Naftaly*, 489 Mich 83, 97-8; 803 NW2d 674 (2011).

[16] Although MCL 205.762(6)(c) defines "residential property" for Small Claims purposes to mean "[r]eal property with less than 4 rental units," the petitions were filed in the Entire Tribunal and not the Tribunal's Small Claims Division. Further, Petitioner admits that Parcel No. 41-14-31-179-020 (635 Madison Avenue SE) has four rental units and not less than four rental units. Nevertheless, said definition does change or otherwise impact the May 31st filing deadline for property classified as commercial real under MCL 205.735a(6).

[17] See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014), which provides, in pertinent part:

> The primary goal of statutory interpretation "is to discern and give effect to the intent of the Legislature." *Lafarge Midwest, Inc v Detroit,* 290 Mich App 240, 246; 801 NW2d 629 (2010). "When ascertaining the Legislature's intent, **a reviewing court should focus first on the plain language of the statute in question**...." *Fisher Sand & Gravel Co v Neal A. Sweebe, Inc,* 494 Mich 543, 560; 837 NW2d 244 (2013) (citations omitted). The contested portions of a statute "**must be read in relation to the statute as a whole and work in mutual agreement**." *U.S. Fidelity & Guarantee Co v Michigan Catastrophic Claims Ass'n (On Rehearing),* 484 Mich 1, 13; 795 NW2d 101 (2009). [Emphasis added.]

28, 2017 petition was not timely filed so as to permit the Tribunal to exercise its subject matter jurisdiction over the commercial parcel's TV for the tax year at issue.[18]

See also *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002) (i.e., "[c]ourts **must give effect to every** word, phrase, and clause in a statute **and avoid an interpretation** that would render **any part** of the statute **surplusage or nugatory**"). [Emphasis added.]
[18] See *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002), which provides, in pertinent part:

> We are obliged to follow the holding of *Szymanski*, [420 Mich 301, 305; 362 NW2d 224 (1984)] . . .in which the Court held that an untimely filing . . . deprived the Tax Tribunal of jurisdiction to consider the petition and that the petition was properly dismissed.
>
> Further, no claim was made, or facts provided to indicate that the Tribunal would have authority over that uncapping for the correction of a clerical error or mutual mistake of fact under MCL 211.53a. In that regard, see *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996) (i.e., the statute itself refers to errors of a typographical, transpositional, or mathematical nature"); *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006) (i.e., "we interpret the phrase 'mutual mistake of fact' in MCL 211.53a to mean an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction"); and, *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69, 81-5; 780 NW2d 753 (2010), which provides, in pertinent part:
>
> These cases stand for the proposition that a mistake about the validity of a tax constitutes a mistake of law. We agree with their reasoning and reaffirm that collection of an unauthorized tax constitutes a mistake of law, not a mistake of fact.
>
> In holding that the mistake about the validity of the property tax in this case constituted a mistake of fact, the Court of Appeals relied on *Ford.* This reliance was misplaced. In *Ford,* the petitioner Ford Motor Company (Ford) sought recovery of taxes that it claimed were paid as a result of a mutual mistake of fact within the meaning of MCL 211.53a. Ford had filed personal property statements with the relevant taxing units, but each report contained misinformation about the amount of taxable property. The assessor in each taxing unit accepted and relied on those statements as accurate when calculating Ford's tax liability. Ford paid the tax bills as issued. After discovering its errors, Ford petitioned the Tax Tribunal for a refund under MCL 211.53a, alleging a mutual mistake of fact.
>
> We held that Ford had stated valid claims of mutual mistake of fact under MCL 211.53a. Ford and the assessors shared and relied on an erroneous belief about a material fact that affected the substance of the transactions. Specifically, Ford's property statements overstated the amount of its taxable property, including reporting the same property twice. As this mistake concerned a numeric value, it was inherently a factual mistake.
>
> The mutual mistake of fact in *Ford* was markedly different from DPS's unilateral mistake of law in this case. Critical to our decision in *Ford* was the fact that the assessor and Ford **shared a mistaken belief that resulted in an erroneous assessment**, i.e., the amount of Ford's property subject to tax. Ford and the assessor mistakenly believed that X amount of Ford's property was taxable, when in reality, Y amount was properly taxable. In contrast, the mistake in this case was the imposition of an unlawful tax. Therefore, *Ford* does not support petitioner's contention that a mistake of fact occurred here. Indeed, in reaching our decision in *Ford,* we did not consider or discuss the distinction between a mutual mistake of fact and a mistake of law.

Additionally, the Tribunal has no "equitable powers" that would allow it to waive statutory requirements or filing deadlines.[19]

With respect to the specific claims in MAHS 17-004014, Respondent claims that Lanning and Prevost, her ex-husband, owned the properties as tenants in common and that the 2016 transfer of Prevost's ownership interest in the properties to Lanning justified the partial uncapping of properties' TV for the tax year at issue. Respondent also claims, correctly, that the Property Transfer Affidavits filed by Lanning are erroneous, as Lanning and Prevost were not husband and wife (i.e., spouses) at the time of the transfers, and that the deeds do not specifically indicate the termination of a joint tenancy. Nevertheless, MCL 552.102 does provide:

> Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, **unless the ownership thereof is otherwise determined by the decree of divorce**. [Emphasis added.]

Unfortunately, both the July 29, 2008 Consent Judgment of Divorce ("Consent Judgment") and Order for Clarification of Consent Judgment of Divorce ("Order") were, despite the above, in artfully drafted to indicate the actual ownership "determined." More specifically, the Consent Judgment provides, in pertinent part:

> Plaintiff and Defendant would like **to jointly own and split** the profits of the 19 residential rental properties (if any) **50/50** until they are sold, at which time parties split the profits (if any) **50/50**. [Emphasis added.]

Although Lanning or, more specifically, Lanning and Prevost's attorney would like the Tribunal to believe that it has no authority to interpret an ambiguous property settlement, the statutory reference and cases cited by Petitioner's attorney do not support that contention. In that regard, MCL 600.1021 does provide that "the family division of the circuit has sole and exclusive jurisdiction over . . . [c]ases of divorce." The statute does not, however, provide that the family division of the circuit court has

---

> The Court of Appeals also mistakenly relied on *Eltel Assoc, LLC v City of Pontiac* for its conclusion that a mistake of fact occurred. ***Eltel*** **involved a purely factual issue concerning the date on which title to property passed from a tax-exempt owner to a nonexempt owner**. The assessor relied on the date of the deed and concluded that the property was subject to the tax for the year in question. In reality, the deed had been placed in escrow pending completion of certain conditions precedent to sale, and the property was not transferred to the nonexempt owner until after tax day. Thus, the Court of Appeals held that there was a mutual mistake of fact regarding the date on which title passed.However, *Eltel* did **not** involve the validity of the underlying tax, which is a legal issue. Therefore, it is of **no** consequence to the disposition of this case. [Emphasis added.]

[19] See *Electronic Data Systems*, *supra* at 547-48.

"exclusive jurisdiction to . . . interpret . . . a Judgment of Divorce."[20] As for the cited cases, the Michigan Court of Appeals in *Vigil v Vigil* does provide, in pertinent part:[21]

> Courts are bound to uphold property settlements reached through negotiations and agreement by the parties in a divorce action absent fraud, duress or mutual mistake. The rule applies whether the settlement is reduced to writing or is simply orally placed on the record and consented to. *Kline v Kline,* 92 Mich App 62, 71-72; 284 NW2d 488 (1979). However, **where any property settlement is ambiguous**, **the court has inherent power to interpret and clarify its terms**. *Greene v Greene,* 357 Mich 196; 98 NW2d 519 (1959), *Boucher v Boucher,* 34 Mich App 213, 219; 191 NW2d 85 (1971).

Assuming Petitioner's attorney is correct, the holding in that case would mean that only the family division of the circuit could interpret a divorce decree. The Court of Appeals did, however, provide, in another case cited by Petitioner's attorney:[22]

> The consent judgment of divorce entered in this case was the result of extensive negotiations between the parties and their respective counsel. The court was not a party to these negotiations and simply gave judicial approval to the final settlement. In our opinion, the phrase "failure to use the marital home as the domicile of the minor child" is not ambiguous or in need of clarification. **The court interpreted the phrase as requiring that there must be a failure by the plaintiff to use the marital home as the domicile of the minor child. The court also indicated that there had not been a change in custody so long as the plaintiff exercised her visitation rights.**
>
> **However, by interpreting the divorce judgment in the manner it did, the trial court effectively changed the substantive rights of the parties. This was clearly impermissible**. In effect, the trial court placed restrictions on the defendant's ability to realize financial satisfaction of his lien that were not present in the original judgment. As a result of the court's clarification, the minor child may no longer be domiciled in the

---

[20] As for the "entering" or "amending" of a Judgment of Divorce, Lanning and Prevost's attorney is correct.
[21] See *Vigil v Vigil*, 118 Mich App 194, 197-98; 324 NW2d 571 (1982).
[22] See *Bers v Bers*, 161 Mich App 457, 464-65; 411 NW2d 732 (1987). Interestingly, the statement from *Bers* relied upon by Lanning and Prevost's attorney is quoted from the Vigil case, which is the statement from Vigil indicated above. As for the reliance by Lanning and Prevost's attorney on *Estes v Titus*, 481 Mich 573; 751 NW2d 493 (2008), neither the Tribunal nor Respondent are challenging the validity of the divorce or attacking the divorce decree. Rather, Respondent is, under the General Property Tax Act, responsible for annually determining the properties' assessment, while the Tribunal is, under the Tax Tribunal Act, a quasi-judicial administrative agency or court with authority to resolve such matters subject to further review by the State's appellate courts. Additionally, the Tribunal, in that capacity, has the authority to interpret, if necessary, statutes and evidence (i.e., legal documents, etc.) in resolving such cases, as recognized in numerous decisions rendered by the Court of Appeals and the Michigan Supreme Court.

> marital home, but defendant could not enforce the lien unless plaintiff took some affirmative steps to change the domicile of the child from the marital home. Moreover, the trial court's interpretation of the term "domicile" holds defendant's right to enforce his lien in abeyance as long as plaintiff exercises her rights to visitation. **This condition was certainly never contemplated in the original divorce judgment**. Therefore, we hold that the trial court **clearly erred** in refusing to enforce the divorce judgment as written and thereby permit the defendant to satisfy his lien on the marital home. [Emphasis added.]

As such, it would appear that an ambiguous divorce decree can be interpreted by a court other than the family division of the circuit court. In that regard, a contrary holding would preclude the Tribunal from exercising its "exclusive and original jurisdiction" relative to the determining of the properties' TV for the tax year at issue given the continuing ambiguous language as to the type of ownership actually indicated by the Consent Judgment and Order.[23] More specifically, the plain language of the Consent Judgment clearly supports a finding that the parties intended to create tenancies in common, which is a form of "joint ownership," based on the indicated "50/50 split" of the properties and proceeds. As for the Order, the underlying motion indicates that the parties "intended to jointly own the properties but expected and agreed that if Plaintiff or Defendant died, ownership of the properties would automatically vest in the other, just as it would have prior to their divorce."[24] The language of the Order is not, however, consistent with that intent, as the Order provides, in pertinent part:

> PARAGRAPH V – REAL PROPERTY SETTLEMENT is hereby clarified and construed to reflect the parties' agreement that the nineteen **residential** properties described in the Consent Judgment of Divorce as **Joint Tenants** until such property is sold or otherwise conveyed by or between Plaintiff and Defendant.

In that regard, the Order does not contain or otherwise provide the words necessary to establish or convey the parties' intent, as indicated by the Court of Appeals in *Butler v Butler*, which provides, in pertinent part:[25]

> An established line of Michigan cases has held **that the addition of the words** "with a right of survivorship" **to a deed or other instrument** creating a joint tenancy creates **not** a mere joint tenancy, **but an interest known as a "joint tenancy with rights of survivorship**." The Michigan

[23] See MCL 205.731(a) and 205.737(1). As a side note, both the Consent Judgment and Order refer to residential properties only even though there is one parcel admittedly classified as commercial, as discussed herein.
[24] Said intent is inconsistent with the case law underlying the interpretation of MCL 552.102 and most, if not all, divorces raise a question as to whether the parties are, as indicated by Respondent, merely attempting to avoid the uncapping and payment of additional taxes. Said question is, however, irrelevant, as indicated herein.
[25] See *Butler v Butler*, 122 Mich App 361, 364; 332 NW2d 488 (1983).

> Supreme Court has held that when the express words of survivorship are used in a conveyance, the parties create a joint life estate in all of the grantees followed by a contingent remainder in fee to the survivor. *Jones v Snyder,* 218 Mich 446, 449; 188 NW 505 (1922); *Beaton v LaFord,* 79 Mich App 373, 376; 261 NW2d 327 (1977).

Fortunately, Lanning and Prevost's attorney attached the Prevost affidavit to the motion underlying the issuance of the Order and that affidavit verifies that the parties' unusual intent was to create a joint tenancy with rights of survivorship.[26] More specifically, said affidavit by the ex-husband is sufficient to support an interpretation of the Order that the parties did create joint tenancies with rights of survivorship and not tenancies in common. As for the deeds, no reformation is fortunately necessary, given the Tribunal's lack of equitable power as indicated above, as Prevost conveyed to Petitioner whatever interest he had in the properties under the Consent Judgment, as subsequently clarified herein.

With respect to the specific claims in MAHS 17-004027, Petitioner claims that (i) there was no transfer of ownership as to the properties at issue "due to lack of delivery, lack of acceptance, and, simply lack of intent, by either party to convey title" to the properties at issue and (ii) Respondent "bears the burden to prove transfer of ownership and cannot meet its burden by relying upon the September 22 Quit Claim Deed." Although case law cited by Petitioner would support the proposition that Respondent has the burden of proving delivery if Respondent is relying on the deed for uncapping purposes,[27] said delivery may be presumed if the deed is recorded.[28] Further, said contention also ignores the fact that Petitioner has the burden of establishing the properties' TV in such cases.[29] More importantly, said contention, unless properly

---

[26] As indicated above, said intent is inconsistent with most, if not all, divorces. Nevertheless, the affidavit evidences an intent to continue, at the very least, amicable business relations relative to the operation of the rental properties at issue.

[27] See *Camp v Guaranty Trust Co*, 262 Mich 223; 247 NW 162 (1933).

[28] See *Gibson v Dymon*, 281 Mich 137, 140; 274 NW 739 (1937), which provides, in pertinent part:

> **Though the recording of a deed raises a presumption of delivery**, *Sessions v Sherwood*, 78 Mich 234; 44 NW 263; *Sprunger v Ensley*, 211 Mich 103; 178 NW 714, **yet a presumption is but a rule of procedure used to supply the want of facts**. **Its only effect is to cast the burden on the opposite party of going forward with the proof**. *Baker v Delano*, 191 Mich 204; 157 NW 427; *Thompson v Southern Mich Transp Co*, 261 Mich 440; 246 NW 174. **Presumptions of fact never obtain against positive proof and are introduced only to supply the want of real facts**. *Hill v Chambers*, 30 Mich 422; *Thompson v Southern Mich. Transp Co*, 261 Mich 440; 246 NW 174. [Emphasis added.]

[29] As stated by the Michigan Court of Appeals in *Jones & Laughlin*, *supra* at 354:

> The tribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **This burden encompasses two separate concepts**: (1) the burden of persuasion, which does not shift during the course of the hearing, **and** (2) **the burden of going forward with the evidence**, **which may shift to the opposing party**. *Kar v Hogan,* 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the*

construed, would prevent the rendering of summary disposition as there would be a genuine issue of material fact in both this case and the consolidated case, as Lanning , relies on the same Quit Claim Deed in support of her contentions in that case. Nevertheless, the contention, if properly construed, would indicate that delivery and acceptance were not effective to the properties at issue in this case only as the parties never intended to transfer those properties, which is supported by the execution and recording of the corrective deed.

Although Petitioner pled in the alternative in MAHS 17-004027, albeit ineffectively, that the transfers were exempt from uncapping as Lanning and Prevost were joint tenants, the evidence is sufficient to establish that the September 22, 2016 and November 23, 2016 transfers relative to Parcel Nos. 41-18-07-105-050 and 41-18-07-105-051, if any, would have been exempt from uncapping even if Lanning and Prevost had the intent to transfer those properties. As such, it is unnecessary to address the other issues raised by Respondent relative to those deeds.

Given the above, the 2016 transfers terminated the joint tenancies with rights of survivorship indicated herein and, as a result, those transfers were not transfers of ownership for purposes of uncapping, as Lanning and Prevost were original owners of the properties (i.e., tenants by entireties) at the time the joint tenancies were created and Lanning remained an owner of the properties after the termination of the joint tenancies.[30] As for the specific 2016 transfers in MAHS 17-004027, the re-conveyance of Parcel Nos. 41-18-07-105-050 and 41-18-07-105-051 from Lanning to Lanning and Prevost would, assuming their conveyance under the September 22, 2016 deed was effective, have been exempt from uncapping as the transfer would have created a joint tenancy between Lanning and Prevost with Lanning being an original owner of the properties at the time the new joint tenancy was created.[31] Therefore,

IT IS ORDERED that the cases are CONSOLIDATED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition in MAHS 17-004014 is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition in MAHS 17-004027 is GRANTED.

Unification of World Christianity v Dep't of Treasury, 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

[30] See also *Klooster v City of Charlevoix*, 488 Mich 289, 306-09; 795 NW2d 578 (2011).

[31] Based on the lack of intent in transferring these properties, it would appear that the corrective deed was, as indicated by Respondent, unnecessary. Rather, Lanning and Prevost should have filed an affidavit with the register of deeds under MCL 565.451d to correct the demonstrated "**scrivener error"** resulting in the unintended inclusion of those properties in the September 22, 2016 deed. [Emphasis added.] See also *Tighe v Davis*, 283 Mich 244, 251; 278 NW2d 60 (1938), which provides, in pertinent part, "[t]he subsequent acts of the parties are **not** compatible with a finding that a valid delivery had been effected"). [Emphasis added.]

IT IS FURTHER ORDERED that the subject properties' taxable value (TV) for the tax year at issue shall be as follows:

Parcel Number	Year	TCV	SEV	TV
41-18-07-105-004	2017	N/A	N/A	$31,136
41-18-07-105-005	2017	N/A	N/A	$47,031
41-18-07-105-006	2017	N/A	N/A	$63,500
41-18-07-105-010	2017	N/A	N/A	$27,448
41-18-07-105-050	2017	N/A	N/A	$89,667
41-18-07-105-051	2017	N/A	N/A	$76,228
41-14-31-179-025	2017	N/A	N/A	$41,516
41-14-31-183-010	2017	N/A	N/A	$47,603
41-14-31-254-005	2017	N/A	N/A	$38,203
41-14-31-255-007	2017	N/A	N/A	$36,201
41-14-31-256-013	2017	N/A	N/A	$32,302

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition in MAHS 17-004014 is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Petitioner's uncapping appeal relative to Parcel No. 41-14-31-179-020 (635 Madison Avenue SE) in MAHS 17-004014 is DISMISSED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition in MAHS 17-004027 is DENIED.

JUDGMENT

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision.[32] As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:

a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

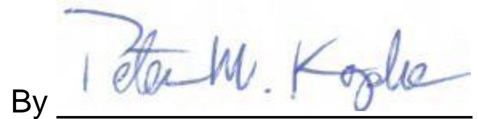
The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing**, if available, that they do not agree with the POJ and to

[32] See MCL 205.726.

state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted with the Motion, the Response, and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.[33]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: March 21, 2019 By 
pmk

[33] See MCL 205.726 and TTR 289(1) and (2).