MICHIGAN REAL PROPERTY REVIEW

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The Section encourages interested members of the Bar to contribute articles and other publishable material relating to real property law and of interest to the profession. Manuscripts are reviewed by attorneys experienced in the subject matter covered by each article.

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LOCAL ASSESSORS RECEIVE A BELATED CHRISTMAS PRESENT: ACT 415 REQUIRES THE SUBMISSION OF VALUATION DATA

by *Gail A. Anderson, James M. Marquardt* and *Michael W. Maddin**

Just when you thought you knew the fine art of shielding from the local assessor information about the purchase price your client paid for certain property, or about the actual value of that property in subsequent years, the Michigan legislature has devised a process that throws out the old rules and compels your clients to disclose that information to the assessor far more often than previously, and upon the occurrence of events not historically connected to the process of divulging valuation data.

With little fanfare or notice, legislation was enacted in December of 1994 which requires, among other things, certain owners of real property to file with the local assessor affidavits stating the value of real property involved in certain transfers. Failure to do so

* Gail A. Anderson is a Partner at Dickinson, Wright, Moon, Van Dusen & Freeman in the Lansing office. She received her law and undergraduate degrees from the University of Illinois and serves on the Real Property Law Section Council of the State Bar of Michigan.

James M. Marquardt is a Senior Attorney with First of America Bank Corporation in Kalamazoo, Michigan. He received his undergraduate degree from the University of Michigan and his law degree from DePaul University College of Law. He serves on the Land Title Standards Committee and the Real Property Law Section Council of the State Bar of Michigan.

Michael W. Maddin is Managing Director and President of Maddin, Hauser, Wartell, Roth, Heller & Pesses, P.C. of Southfield, Michigan. He received his Juris Doctor from Wayne State University and his undergraduate degree from the University of Michigan. He was Chairman of the Real Property Law Section Committee on Commercial Leasing and Management of Real Property from 1982-1993 and has served on the Real Property Law Section Council of the State Bar of Michigan since 1992.

The authors wish to acknowledge the assistance and input of Gerard K. Knorr, of First American Title Insurance Company in Troy, Michigan.

can result in a $5.00 per day penalty. It is therefore critical that attorneys in this State become familiar with the provisions of 1994 PA 415.

Public Act 415 was enacted to address the effect of the constitutional amendment limiting property assessment increases. As a result of Proposal A, beginning with taxes levied in 1995, the taxable value of any parcel of real property cannot increase from one year to the next by more than the rate of inflation or five percent, whichever is less, until ownership of the property is transferred.[1] Upon a "transfer of ownership," real property is reassessed at its market value.

The necessary and consequential effect of Proposal A would be to dramatically limit the ability of local assessors to reassess property if "transfer of ownership" was limited to conveyances of title by deed. Faced with the likelihood that property owners would creatively avoid passing title by deed, thus lawfully avoiding reassessment, the Legislature appears to have responded by increasing the opportunities for reassessment of properties.

Public Act 415 attempts to further this objective by expansively defining what is and what is not a "transfer of ownership" for these purposes. Act 415 further provides that when there has been a "transfer of ownership," the transferee has 45 days to file the new transfer affidavit form with the local assessor.

In reviewing Act 415's definition of "transfer of ownership," two points are important to remember. First, this definition of "transfer" is only relevant in determining when property may be reassessed at its true cash value. A "transfer" for this purpose is not necessarily the same as a "transfer" for purposes of the new state transfer tax or, for that matter, for purposes of the county transfer tax. By way of example, if a lender took back a deed in lieu of foreclosure, this would not constitute a "transfer" for purposes of Act 415 or the state transfer tax, but would constitute a "transfer" for purposes of the county transfer tax.[2] By way of another example, an initial purchase on land contract would not constitute a "transfer" for purposes of either the state or county transfer taxes, but would constitute a "transfer" for purposes of Act 415.[3] The meaning of "transfer" is different under all three statutes, and accordingly, the requirements of each statute must be analyzed independently when a transfer occurs (and evaluated before the transfer, if possible, from a planning standpoint).

A second point that is important to remember is that a "transfer of ownership" for purposes of Act 415 encompasses a number of transactions and events not traditionally viewed as real estate transfers. As will be discussed in more detail below, a "transfer of ownership" for purposes of Act 415 encompasses, for example, certain stock transfers, long term leases, and changes in the designation of beneficiaries under a trust. Accordingly, Act 415 will not only affect the practice of law in the real estate area, but also in the corporate area, the estate planning area and other areas.

Definition of "Transfer of Ownership"

The primary significance of Act 415 lies in its expansive definition of "transfer of ownership," which is defined in section 27a(6) as:

> the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest.[4]

Act 415 further provides that this broad definition includes, but is not limited to, the following:

(a) A conveyance by deed.[5]

(b) A conveyance by land contract. . . .[6]

(c) A conveyance to a trust after December 31, 1994, except if the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.[7]

(d) A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.[8]

(e) A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary.[9]

(f) A conveyance by distribution under a will or by intestate succession, except if the distributee is the decedent's spouse.[10]

(g) A conveyance by lease if the total duration of the lease,including the initial term and all options for renewal, is more than 35 years or the lease grants the lessee a bargain purchase option. As used in this subdivision, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more

than 80% of the property's projected true cash value at the termination of the lease. . . . This subdivision does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).[11]

(h) A conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. Unless notification is provided under subsection (8), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision.[12]

(i) A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.[13]

Act 415 makes clear that this list of transfers is not intended to be exhaustive. Other "conveyance[s] of title to or present interest[s] in property" are also subject to the reporting and reassessment provisions of Act 415. One such example would be an assignment of vendee's interest in land contract which, although not listed in Section 27a(6), is clearly the transfer of a present interest in property and would thus appear to meet Act 415's expansive definition of "transfer of ownership." Other transactions might similarly come within that definition.

Act 415 not only contains a list of examples of transactions and events which are included within the definition of a "transfer of ownership," but also contains a list of other specific transfers which are excluded from the definition. These excluded transactions and events are:

(a) The transfer of property from one spouse to the other spouse or from a decedent to a surviving spouse.[14]

(b) A transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.[15]

(c) A transfer subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease.[16]

(d) A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.3101 to 600.3280 and 600.5701 to 600.5785 of the Michigan Compiled Laws, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within one year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).[17]

(e) A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.[18]

(f) A conveyance to a trust if the sole present beneficiary of the trust is the settlor or the settlor's spouse.[19]

(g) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.[20]

(h) A transfer creating or terminating a joint tenancy between two or more persons if at least one of the persons is an original owner of the property when the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least one 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 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.[21]

(i) A transfer for security or an assignment or discharge of a security interest.[22]

(j) A transfer of real property or other ownership interests among members of an affiliated group. As used in this subsection, "affiliated group" means one or more corporations connected by stock ownership to a common parent corporation. Upon request by the state tax commission, a corporation shall furnish proof that a transfer meets the requirements of this subdivision. A corporation that fails to comply with a request by the state tax commission under this subdivision is subject to the penalties set forth in section 27b.[23]

(k) Normal public trading of shares of stock or other ownership interest that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities.[24]

(l) A transfer of real property or other ownership interest among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to the penalties set forth in section 27b.[25]

(m) A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the Internal Revenue Code of 1986, 26 U.S.C. 368. Upon request by the state tax commission, a property owner shall furnish proof that a transfer meets the requirements of this subdivision. A property owner who fails to comply with a request by the state tax commission under this subdivision is subject to the penalties set forth in section 27b.[26]

Real property attorneys can therefore expect to file a transfer affidavit any time property is conveyed by deed or land contract, subject to certain exceptions for conveyances into trusts and between spouses. Estate planning attorneys must review all conveyances into a trust, as well as all testate or intestate distributions, to determine if Act 415 is triggered. Business and corporate attorneys should analyze all transactions involving the sale of shares of stock in a corporation, or the transfer of any interest in a partnership or other legal entity, to determine if Act 415 applies.

One area in which confusion is likely to arise involves life estates, where the obligation to file the transfer affidavit occurs at the expiration of the life interest, and not at the time of the conveyance subject to the life estate or life lease.[27] Similarly, another area of potential confusion involves leases. Section 27a(6)(g) tells us that entering into a lease with a total duration of more than 35 years constitutes a transfer of ownership, and a transfer affidavit must be filed. No mention is made, however, of the termination of the 35-year leasehold, and whether this termination constitutes "transfer of ownership," or whether a transfer affidavit must then be filed by the lessor, who is arguably the "transferee."

Conceptually, this transfer of the present beneficial interest to the lessor upon termination of the lease is not unlike the transfer to a remainderman upon termination of a life estate. In each case, what constitutes a transfer is not so much a transaction as it is an event which, more often than not, is not accompanied by documentation. Since attorneys are typically involved in documenting transactions, this lack of documentation at precisely the moment when the obligation to file transfer affidavits arises, and the likely absence of attorneys, may foreseeably result in transfer affidavits not being timely filed.

This situation may be distinguished from leases containing an option to purchase which, upon the option being exercised, result in a transaction containing at least one document, a deed. The transaction process inherent in the conveyance of title is more likely to result in transfer affidavits being filed in accordance with Act 415.

Real Estate Transfer Affidavit

Once there has been a "transfer of ownership," the buyer, grantee or transferee has 45 days to file a Real Estate Transfer Affidavit with the local assessor.[28] This form, a copy of which appears at the conclusion of this article, is a new Treasury form created by the state tax commission specifically for this purpose (Form L-4260). It should not be confused with the revised Real Estate Transfer Tax Valuation Affidavit (Form L-4258) which is submitted to the local register of deeds when you choose not to enter the amount paid for real estate on the deed.

Under the provisions of Act 415, it is clear that no transfer affidavit is required unless there has been a "transfer of ownership." Form L-4260 nonetheless contains a section to be completed where the transferee claims an "exemption" — **i.e.**, where there has been no "transfer of ownership" within the meaning of Act 415. Filing the affidavit under these circumstances is optional. Property owners should be advised, however, that Act 415 also requires the register of deeds to notify the local taxing unit of any recorded transaction involving the ownership of property.[29] Thus, it is likely that property owners who do not file an affidavit claiming an exemption will receive an inquiry from their local assessor.

Failing to file Form L-4260 when required may result in a penalty of $5.00 per day, up to a maximum of $200.00. In addition, a transferee would be responsible to pay any additional taxes that would have been levied if the transfer had been recorded from the date of transfer, together with interest and penalties.[30]

Other Definitions

In addition to "transfer of ownership," Act 415 also defines other concepts contained in the new constitutional amendment such as "taxable value," "additions" and "losses." The new constitutional provision states:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the **taxable value** of each parcel of property **adjusted for additions and losses**, shall not increase each year by more than the increase in the immediately preceding year in the general price level . . . or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value (emphasis added).[31]

Until there is a "transfer of ownership" within the meaning of Act 415, the "taxable value" of any parcel of property cannot increase from one year to the next by more than the rate of inflation, or five percent, whichever is less. Even when the assessment cap is in place, the "taxable value" of property is adjusted each year for "additions" and "losses." Act 415 defines "additions" to include new construction or replacement construction, as well as new public services such as water service, sewer service, natural gas, electrical and telephone service, sidewalks and street lighting. "Additions" also includes an increase in the "taxable value" attributable to complete or partial remediation of environmental contamination. "Additions" does not include increased value attributable to platting, splits or combinations of property or changes in zoning.[32]

Act 415 defines "losses" to include a decrease in value caused by the destruction or removal of property or attributable to environmental contamination existing on the immediately preceding tax day. "Losses" does not include decreased value attributable to plats, splits or combinations of property or changes in zoning.[33]

Special Problems for Land Contracts and Leases

The formula for determining taxable value for real property sold under land contract is adjusted under Act 415. As stated above, generally taxable value is determined according to Section 27a(3):

> Upon 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.[34]

Where ownership to property is conveyed by land contract, the adjustment is to occur once, in the year following the year the land contract is entered into, but not at the subsequent date when title passes:

> The taxable value of property conveyed by a land contract executed after December 31, 1994 shall be adjusted under subsection (3) for the calendar year following the year in which the contract is entered into and shall not be subsequently adjusted under subsection (3) when the deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.[35]

The effect of this is not yet completely clear. Although taxable value is not to be adjusted when the deed in fulfillment of a land contract is recorded, a question exists whether the transferee still has an obligation to file a transfer affidavit with the assessor. Under Section 27a(6)(a), an obligation exists to file a transfer affidavit upon conveyance by deed, and no exception is made for deeds in fulfillment of land contract. If a transfer affidavit is filed, it appears possible, if not likely, that the assessor may attempt to adjust the value of the property conveyed, even if an adjustment appears prohibited under Section 27a(6)(b).

The specific mention in 27a(6)(g) of adjustment of taxable value for certain long-term leases and lease options appears to mirror the general rule in Section 27a(3). This provision is silent, however, as to whether taxable value is to be adjusted again upon the termination of a lease or upon the exercise of an option. In the first instance, it would appear that the "beneficial use" of the property has passed from the lessee back to the lessor. In the latter instance, although there will be a transfer instrument — **i.e.**, a deed from the lessor/optionor to the lessee/optionee — arguably there will be no change in the "beneficial use" of the property.

Homestead Exemption Affidavit

Act 415 also amended a portion of the general property tax act dealing with the homestead affidavit that must be filed in order to obtain an exemption from certain local school taxes. Legislation enacted earlier in the year, 1994 Public Act 237, directs a person who prepares a closing statement in connection with the sale of property to provide affidavit and rescission forms to the buyer and seller at the closing and, if so requested by the buyer or seller, requires such person to file the forms with the local tax collecting unit.[36] A single form entitled "homestead exemption update" (T-1058), contains both the affidavit and rescission and is available from the Michigan Department of Treasury.

Act 415 adds two features to Act 237 with respect to the homestead exemption forms. First, Act 415 provides for an appeal process should the closing statement preparer fail to provide the exemption affidavit and rescission form(s) or, fail to file the same. The relevant portion provides:

> If a closing statement preparer fails to provide homestead exemption affidavit and rescission forms to the buyer and seller, or fails to file the affidavit and rescission forms with the local tax collecting unit if requested by the buyer or seller, the buyer may appeal to the Department of Treasury within thirty (30) days of notice to the buyer that an exemption was not recorded. If the Department of Treasury determines that the buyer qualifies for the exemption, the Department of Treasury shall notify the assessor of the local tax collecting unit that the exemption is granted and the assessor of the local tax collecting unit or, if the tax roll is in the possession of the county treasurer, the county treasurer shall correct the tax roll to reflect the exemption.[37]

Second, Act 415 affirmatively states that the act does not create a cause of action against a closing statement preparer for failure to provide or file the form(s). The act provides:

> This subsection does not create a cause of action at law or in equity against a closing statement preparer who fails to provide homestead exemption affidavit and rescission forms to a buyer and seller or who fails to file the affidavit and rescission forms with the local tax collecting unit when requested to do so by the buyer or seller.[38]

Under Act 415, one who prepares the closing statement continues to be responsible for the homestead affidavit and rescission forms. Where a buyer has not filed an exemption because the forms were not provided and/or filed by the closing statement preparer, the buyer may appeal to the Department of Treasury to obtain an exemption, but the buyer may not bring a cause of action against the closing statement preparer under the act.

Conclusion

The implementation of Proposal A has in the past and continues to significantly impact real estate practice generally and real estate closings particularly. Attorneys closing any type of real estate sale must now deal with the state transfer tax as well as the county transfer tax and applicable affidavits (Treasury forms L-4258 and L-4259). Attorneys closing residential sales must, in addition, now deal with homestead exemptions and applicable affidavits (Treasury forms T-1056, T-1057 and T-1058).

Public Act 415 impacts not only the closing of real estate sales, but other transactions and events such as stock purchases, long term leases, lease options and changes in trust beneficiaries. Thus, potentially all

attorneys must deal with the concepts of "taxable value" and "transfers of ownership" and the new applicable affidavit (Treasury form L-4260). Attorneys who have not reviewed the provisions of Act 415 should do so. When reviewing these provisions, it is important to remember that, ultimately, the expansive definition of "transfer of ownership" in Act 415 is only relevant in determining when a property may be reassessed at its true cash value.

Endnotes

1. Const. 1963, Art. IX, §3.
2. **Cf.** MCL 211.27a(7)(d); MCL 207.526(u); and MCL 207.505.
3. **Cf.** MCL 211.27a(6)(b); MCL 207.526(o); and MCL 207.505(m).
4. MCL 211.27a(6).
5. MCL 211.27a(6)(a).
6. MCL 211.27a(6)(b).
7. MCL 211.27a(6)(c).
8. MCL 211.27a(6)(d).
9. MCL 211.27a(6)(e).
10. MCL 211.27a(6)(f).
11. MCL 211.27a(6)(g).
12. MCL 211.27a(6)(h).
13. MCL 211.27a(6)(i).
14. MCL 211.27a(7)(a).
15. MCL 211.27a(7)(b).
16. MCL 211.27a(7)(c).
17. MCL 211.27a(7)(d).
18. MCL 211.27a(7)(e).
19. MCL 211.27a(7)(f).
20. MCL 211.27a(7)(g).
21. MCL 211.27a(7)(h).
22. MCL 211.27a(7)(i).
23. MCL 211.27a(7)(j).
24. MCL 211.27a(7)(k).
25. MCL 211.27a(7)(l).
26. MCL 211.27a(7)(m).
27. MCL 211.27a(7)(c).
28. MCL 211.27a(8).
29. MCL 211.27a(8).
30. MCL 211.27b(1)(a-c).
31. Const. 1963, Art IX, §3.
32. MCL 211.34d(1)(b).
33. MCL 211.34d(1)(h)(i).
34. MCL 211.27a(3).
35. MCL 211.27a(6)(b).
36. MCL 211.7cc(12).
37. MCL 211.7cc(12).
38. MCL 211.7cc(12).

Michigan Department of Treasury
L-4260 (1/95)

PROPERTY TRANSFER AFFIDAVIT

*This form is issued under authority of P.A. 415 of 1994. **Filing is mandatory.***

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). It is used by the assessor to ensure the property is assessed properly and receives the correct ***taxable value***. It must be filed by the new owner with the ***assessor for the city or township*** where the property is located within ***45 days*** of the transfer. If it is not filed timely, a penalty of $5/day (maximum $200) applies. The information on this form is not confidential.

1. Street Address of Property	2. County	4. Date of Transfer (or land contract was signed)
3. City /Township/Village of Real Estate ☐ City ☐ Township ☐ Village		5. Purchase Price of Real Estate

6. Property Identification Number (***PIN***). If you don't have a PIN, attach legal description.

PIN. This number ranges from 10 to 25 digits. It usually includes hypens and sometimes includes letters. It is on the property tax bill and on the assessment notice.

7. Seller's (Transferor) Name	8. Buyer's (Transferee) Name and Mailing Address

Items 9 - 13 are optional. However, by completing them you may avoid further correspondence.

Transfers include deeds, land contracts, transfers involving trusts or wills, certain long-term leases and interest in a business. See the back for a complete list.

9. Type of ***Transfer***
☐ Land Contract ☐ Deed ☐ Other (specify)

10. Is the transfer between related persons? ☐ Yes ☐ No	11. Amount of Down Payment
12. If you financed the purchase, did you pay market rate of interest? ☐ Yes ☐ No	13. Amount Financed (Borrowed)

Exemptions

The Michigan Constitution limits how much a property's ***taxable value*** can increase while it is owned by the same person. Once the property is transferred, the ***taxable value*** must be adjusted by the assessor to 50 percent of the property's usual selling price. Certain types of transfers are exempt from adjustment. Below are brief descriptions of the types of exempt transfers; full descriptions are in MCL Section 211.27a(7)(a-m). If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- ☐ transfer from a spouse
- ☐ change in ownership solely to exclude or include a spouse
- ☐ transfer subject to a life lease or life estate (***until*** the the life lease or life estate expires)
- ☐ transfer to effect the foreclosure or forfeiture of real property
- ☐ transfer by redemption from a tax sale
- ☐ transfer into a trust where the sole beneficiary is the settlor (creator of the trust) or the settlor's spouse
- ☐ transfer resulting from a court order unless the order specifies a monetary payment
- ☐ transfer creating or ending a joint ownership if at least one person is an original owner of the property (or his/her spouse)
- ☐ transfer to establish or release a security interest (collateral)
- ☐ transfer of real estate through normal public trading of stocks
- ☐ transfer within an entity under common control or affiliated group
- ☐ transfer resulting from transactions that qualify as a tax-free reorganization
- ☐ other, specify:

Certification

I certify that the information above is true and complete to the best of my knowledge.

Owner's Signature	Date	If signer is other than the owner, print name and title.

BANKRUPTCY REFORM ACT OF 1994: HOW THE RULES HAVE CHANGED

by *Vicki R. Harding**

Although several attempts to pass bankruptcy reform bills failed during the last two years, in October, 1994 the Bankruptcy Reform Act of 1994 (the "Act") passed both the House of Representatives and the Senate and was signed by the President in less than a month.[1] The Act addresses a number of discrete issues and overrules existing precedent in some areas, but does not effect any major structural changes to the Bankruptcy Code.[2] As a general rule, the amendments apply to bankruptcies filed after October 22, 1994. Provisions of particular interest to the commercial real estate industry include the amendments dealing with single asset real estate cases, the status of rents and hotel revenues, rights of a tenant when a debtor-landlord rejects a lease, and ad valorem tax liens.[3]

Single Asset Real Estate Cases (Section 218 of the Act).[4] Single asset real estate cases, meaning a bankruptcy case filed by a debtor whose only asset is a real estate project, have been controversial. Often the goal of the bankruptcy is to write-down or restructure a nonrecourse mortgage loan, with the debtor retaining ownership of the project — which abrogates the basic bargain between the borrower and mortgagee. Although some have argued that a debtor whose only asset is a real estate project should not be permitted to file bankruptcy,[5] the Act implicitly rejects this view because it adds new procedures applicable to "single asset real estate."[6]

Within 90 days after a single asset real estate case is filed, the debtor must either propose a plan of reorganization that has a "reasonable possibility" of confirmation or begin paying interest to secured creditors (other than those holding judgment or statutory liens) at a current fair market rate based on the value of the creditor's interest in the real estate. A debtor's failure to comply with one of these requirements constitutes the basis for granting the

* Vicki R. Harding is a partner in the Detroit office of Pepper, Hamilton & Scheetz. She is a member of their commercial practice group specializing in real estate, bankruptcy and intellectual property matters, and received her B.A. from the Univeristy of Texas at Austin and J.D. from Harvard Law School. Ms. Harding is Chair of the Mortgages and Related Financing Devices and Security Interests Committee of the Real Property Law Section of the State Bar of Michigan.

creditor relief from the automatic stay to permit it to enforce its remedies against the real estate.

This provision will probably have limited significance since it applies only where the total non-contingent, liquidated secured debt is less than $4 million. The provision will also be difficult to apply because many aspects are unclear or will be subject to substantial dispute. For example, the interest payments must be "interest at a current fair market rate on the value of the creditor's interest in the real estate." This requires valuing the property and determining a current market rate of interest. Both value and market rate are often vigorously contested.

Rents and Hotel Revenues (Section 214 of the Act).[7] The Act also addresses the hotly contested area of rents. As a general rule, a pre-petition lien does not reach post-petition property in a bankruptcy.[8] However, there have always been certain exceptions in Section 552(b) of the Bankruptcy Code, including liens on "rents" or "profits" of pre-petition collateral **to the extent** provided in the applicable agreement **and state law** (subject to modification based on the equities of the case).[9]

Dozens of cases have addressed a mortgagee's claims to post-petition rents under applicable state law over the last few years. If **both** the mortgagee and the debtor have an "interest" in the rents, they constitute cash collateral, and the mortgagee is entitled to adequate protection of its interest as a condition of the debtor's use of the rents. If the **mortgagee** does **not** have an interest, the debtor is entitled to use the rents as it chooses. Conversely, if the **debtor** does **not** have any interest in the rents, they are not even part of the bankruptcy estate.

In Michigan, many mortgagees will consent to use rents for necessary operating expenses of the property, although there will often be disagreement over certain items such as management fees, property taxes and capital repairs or improvements. However, not surprisingly, mortgagees do not consent to use of the rents to fund the debtor's fight against the mortgagee in bankruptcy (e.g., to pay the debtor's bankruptcy counsel and the costs of a contested confirmation hearing, including expert fees). If an undersecured mortgagee has an interest in the rents, and thus is entitled to adequate protection, the debtor is unlikely to be able to use the rents for its professional fees and other similar administrative expenses.[10] If the debtor and its principals are unable or unwilling to fund the cost of a bankruptcy fight from other resources and the professionals are not willing to gamble that they will ultimately get paid under a successful plan of reorganization, the battle over whether the mortgagee has an interest in rents can determine whether the debtor has any chance at winning the war.

Court decisions in the rent cases typically turned on an analysis of the effect under state law of a mortgagee's failure to obtain a receiver, seize the rents, or otherwise exercise remedies to collect the rents. The Act resolves this controversy by adding a new subsection 552(b)(2) applicable to rents that (1) deletes the reference to state law for rents, and (2) provides that if there is a pre-petition security agreement that includes rents, then the lien extends to post-petition rents (subject to modification based on the equities of the case). As a result, post-petition rents should generally constitute collateral of a mortgagee with a pre-petition assignment or mortgage, notwithstanding the failure to obtain a receiver or otherwise exercise an assignment of rents prior to bankruptcy.

The new rents subsection also addresses hotel revenues. The status of hotel revenues before the Act was particularly controversial. Section 552(b) of the Code permitted a mortgagee to reach post-petition "proceeds, product, offspring, rents, or profits" of pre-petition collateral "to the extent provided . . . by applicable nonbankruptcy law." The courts struggled with a number of questions, including: Are hotel revenues "rents" governed by real estate law or are they "accounts" or "general intangibles" governed by the Uniform Commercial Code? If the revenues are not "rents," are they "profits" or "proceeds" for purposes of Section 552(b) of the Code? If the revenues are accounts governed by the UCC that are profits subject to 552(b), does Section 9-306 of the Uniform Commercial Code constitute applicable state law that limits the scope of post-petition liens?

Although two circuit courts held that post-petition hotel revenues were within the scope of Section 552(b), and thus subject to a mortgagee's pre-petition liens,[11] the majority of the cases held that post-petition hotel revenues were not subject to pre-petition liens. The majority view is reversed by the Act. If a creditor has an interest in "fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties"[12] under a pre-petition security agreement, then the security interest extends to post-petition revenues (again subject to modification based on the equities of the case).

However, for both rents and hotel revenues, a mortgagee's claim remains subject to avoidance under various provisions of the Bankruptcy Code. Thus, liens on and payments from rents and hotel revenues can still be avoided as preferences (Section 547 of the Code) or fraudulent conveyances (Section 548 or Section 544(b) of the Code).

For example, if hotel revenues constitute accounts subject to the Uniform Commercial Code, the mortgagee must file appropriate UCC financing statements to perfect its security interest in the revenues. Furthermore, the UCC provides that perfection of an interest in accounts is governed by the law of the state where a debtor is located; and if the debtor has more than one place of business, it is deemed to be located at its "chief executive office."[13] Thus, if a mortgagee relied on an assignment of rents recorded in the real estate records, and did not file appropriate financing statements for accounts, it would be unperfected. Similarly, if the hotel and the debtor's main office are located in different states, and the mortgagee filed only in the state where the hotel is located, it would be unperfected. If a mortgagee has an unperfected security interest under the UCC, in a bankruptcy its claim becomes in effect an unsecured claim.[14] Consequently, a mortgagee must take care to properly perfect its liens under applicable state law.

Tenant Rights If Debtor-Landlord Rejects Lease (Section 205 of the Act).[15] Section 365(h) of the Bankruptcy Code includes a provision giving a tenant special rights when the lessor is a bankruptcy debtor and has elected to reject (as opposed to assume) a lease. The Act amends this provision to clarify and/or expand the tenant's rights.

As a general rule, leases and executory contracts must be either assumed or rejected, and the bankruptcy debtor must cure all defaults (other than bankruptcy, insolvency and other similar defaults) and provide adequate assurance of future performance as a condition of assuming the lease or contract. If the debtor rejects, it is deemed to have breached the lease or contract as of the commencement of the case, which frequently means that the other contract party is left with only an unsecured claim for damages. However, if a debtor-landlord rejects a lease, the Bankruptcy Code permits a tenant to elect to remain in possession for the term of the lease.

Previously, some courts took a restrictive view of the tenant's possession rights, holding that the tenant was entitled to continue to occupy the property for the term of the lease, paying the rent at the rate provided for in the lease, but was not entitled to enforce other provisions of the lease — such as restrictive covenants or the right to assign. Under Section 365(h) as amended, a tenant retains all rights that are "in or appurtenant to the real property," including the right of use, possession, quiet enjoyment, subletting, assignment or hypothecation. Shopping center leases receive special mention, with tenants retaining rights under provisions relating to radius, location, use, exclusivity or tenant mix or balance.

Post-Petition Property Tax Liens (Section 401 of the Act).[16] Some courts had concluded that the automatic stay prevents post-petition property taxes from becoming a lien, with the result that the tax claim is an unsecured administrative or priority claim.[17] Among other things, this meant that property could be sold free and clear of liens and other interests without paying post-petition property taxes, even though the debtor was delinquent in paying those taxes. This led to a windfall for secured creditors and others, whose liens and claims to proceeds would otherwise typically be subordinate to statutory tax liens.

Section 401 of the Act explicitly overrules this result by adding the following to the list of actions not subject to the automatic stay: "creation or perfection of a statutory lien for an ad valorem property tax . . . if such tax becomes due after the filing of this petition." All Michigan ad valorem taxes, both pre-petition and post-petition, will now be secured based on this amendment to the Code and the current lien provisions set forth in M.C.L. §211.40.

This amendment to the Bankruptcy Code was included to address in part the fiscal concerns of taxing authorities that were being deprived of tax revenue as a result of losing their liens for post-petition taxes. Although the Act's amendment should increase distributions to taxing authorities in a Chapter 11 reorganization, this may not be the effect in a Chapter 7 liquidation.

Under Section 724(b) of the Bankruptcy Code, distributions of property or proceeds that are allocable to unavoidable tax liens are effectively reallocated to payment of priority claims. (This assumes there are no other liens senior to the tax liens, as is generally the case with ad valorem taxes.) If all of the assets of a Chapter 7 estate are subject to liens of undersecured creditors such that there is no equity in the assets, Section 724(b) provides one of the few potential sources of funds to pay priority claims, including professional

fees. The secured creditor will not be able to obtain the property without paying the amount of the senior tax lien, and distribution of the proceeds from any sale will similarly be applied first to payment on the senior tax lien, which will be subject to distribution under Section 724(b). Thus, priority claims will be paid prior to payment of the secured creditor's claim based on the tax lien.

If post-petition taxes are **unsecured** administrative claims, the tax claims would be paid pro rata with the other administrative creditors. However, if the post-petition taxes are **secured** claims and are subject to Section 724(b), the tax claims will be subordinated with respect to distributions on account of the tax lien, and will be paid after other priority claims.

Although some tax authorities vigorously contest application of Section 724(b) of the Code, counsel for Chapter 7 trustees are likely to attempt to take full advantage of this section to fund payment of priority claims, including asserting rights under Section 724(b) with respect to post-petition ad valorem taxes.

Note that M.C.L. 211.40 was amended in 1994, which effectively closed a potential gap. Prior to the 1994 amendments, it was possible for taxes to become "due" before they became a lien.[18] If a bankruptcy petition is filed between the date a tax becomes due and the date the lien arises, the new exception to the automatic stay would not apply (since the tax did not become due post-petition), and an argument could be made that the automatic stay prevents the lien from arising post-petition.

However, 1994 Public Act No. 80 amended M.C.L. §211.40 to provide that real and personal property taxes become a lien as of "tax day," which is December 31st of the prior year. Thus, the automatic stay will not apply to prevent a lien arising for any taxes that become due pre-petition since the lien is already in effect, and the new automatic stay exception will be applicable to any taxes that become due post-petition.

UCC Continuation Statements (Section 204 of the Act).[19] As a general rule, UCC financing statements expire after five years unless the secured creditor files a continuation statement.[20] However, if "insolvency proceedings" are commenced against the debtor before the filing lapses, the security interest remains perfected until the later of (1) the expiration of the five-year period and (2) sixty days after the insolvency proceedings terminate.

Prior to the Act, arguably the automatic stay prevented a secured creditor from filing continuation statements during a pending bankruptcy. Although the security interest remains perfected during the bankruptcy, if bankruptcy proceedings terminate **after** the applicable five year period expires, there is a risk that the security interest could become unperfected. Action must be taken to continue perfection within sixty days after the proceedings terminate, and a secured creditor may not become aware that the proceeds have terminated in time to attempt to file a continuation statement. In addition, there is the risk that a continuation statement (which can be signed by the secured creditor and does not require the signature of the debtor) will be rejected when it is submitted for filing. The UCC provides that a continuation statement is to be filed "within six months prior to the expiration of the five-year period specified."[21] Under this provision, a continuation statement submitted at a later date after termination of the bankruptcy would be untimely, and the secured creditor would be forced to argue that the untimeliness should be excused because of the restrictions arising from the automatic stay in the bankruptcy.

The Act amends the Bankruptcy Code to confirm that a secured party may file a continuation statement during the pendency of a bankruptcy. Now that the automatic stay clearly does **not** prevent filing a continuation statement, it will be important to file statements prior to expiration of the five year period regardless of any pending bankruptcy, since the automatic stay will no longer provide an excuse for missing the five year deadline.

DePrizio Overruled (Section 202 of the Act).[22] Under Section 547 of the Bankruptcy Code, transfers of interests by a debtor (including payments and granting liens) are potentially avoidable as preferences if they are (1) to or for the benefit of a creditor, (2) for or on account of an antecedent debt, (3) made while the debtor was insolvent, (4) made within the applicable time period, and (5) the creditor receives more than it would in a Chapter 7 liquidation if the transfer had not been made.

The applicable time period is up to ninety days prior to the bankruptcy petition, and up to a year before the petition if the creditor is an insider. As a result of the **DePrizio**[23] line of cases, a transfer to an outside lender was subject to avoidance for up to a year, as opposed to ninety days, where the lender held the guarantee of an insider.

The argument was as follows: The transfer to the lender is also a transfer for the benefit of the insider guarantor since it reduces exposure on the guarantee. The transfer for the benefit of an insider is subject to avoidance for up to a year. Under Section 550(a) of the Bankruptcy Code, an avoided transfer may be recovered from an initial or mediate transferee as well as the creditor.[24] The transfer could be recovered from the lender because the lender was the initial transferee. Thus, a transfer to an outside lender holding an insider guarantee could be avoided for up to a year because it was for the benefit of an insider, and could be recovered from the lender as the initial transferee of the avoided transfer.

The Act overruled this result by amending Section 550 to provide that if a transfer (1) is made between ninety days and one year prior to the filing and (2) is avoided under the preference section of the Bankruptcy Code as a transfer for the benefit of an insider, the trustee may not recover from a transferee that is not an insider. Now an undersecured lender that strengthens its position by taking additional collateral is exposed to a potential preference action for only ninety days, as opposed to a full year, even if it holds an insider's guarantee.

In response to **DePrizio**, a number of lenders required insider guarantors to waive subrogation rights in an attempt to prevent the insider from becoming a creditor of the debtor. If the insider was not a creditor, theoretically the transfer to the lender would not be "for the benefit of a creditor," even though it was for the benefit of an insider. Note that the statutory resolution of the **DePrizio** issue removes the justification for a requirement that an insider guarantor waive any subrogation rights against the debtor.

Endnotes

1. H.R. 5116 passed the House of Representatives by voice vote on October 5, 1994, and passed the Senate by unanimous consent on October 6, 1994. The Act was signed by the President and enacted as Pub. L. No. 103-394 on October 22, 1994.
2. 11 U.S.C. §§101 **et seq.**
3. The Act also includes provisions that affect residential mortgages, including: amendments to §1123(b) of the code (Section 206 of the Act) that conform treatment of a residential mortgage in a Chapter 11 case to that in a Chapter 13 by preventing modification of a claim secured only by a mortgage on a principal residence; amendments to §1322 of the Code (Section 301 of the Act) giving a debtor the right to cure defaults on a home mortgage loan until at least the foreclosure sale; and amendments to §§1123, 1222 and 1322 of the Code (Section 305 of the Act) that prevent mortgagees from getting interest on interest or interest on late charges and other fees where state law would prohibit the interest or it was not contemplated by the parties.
4. Section 218 adds a definition of "single asset real estate" as §101(51B) of the Code, and modifies the automatic stay procedures in §362 of the Code.
5. The argument that all single asset real estate cases should be dismissed as **per se** inappropriate must be distinguished from the argument that the facts of a particular case show evidence of an intent to abuse the bankruptcy process. While the first argument is now questionable in light of the new provisions relating to single asset real estate cases, the second argument was not addressed by the Act's amendments. **See** the article in this issue entitled "Single Asset Chapter 11 Real Estate Cases: Bad Faith and New Debtor Syndrome Affirmed by the Sixth Circuit Court of Appeals."
6. "'[S]ingle asset real estate' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of the debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000." 11 U.S.C. §101(51B).
7. Section 214 amends §552(b) of the Code to modify the scope of post-petition property that may be subject to pre-petition liens.
8. **See** 11 U.S.C. §552(a).
9. **See** 11 U.S.C. §552(b) as in effect prior to amendment by the Act.
10. **See, e.g., The Travelers Inc. Co. v River Oaks L.P. (In re River Oaks L.P.)**, 166 B.R. 94 (E.D. Mich. 1994).
11. **See Financial Sec. Assurance, Inc. v Days California Riverside, L.P. (In re Days California Riverside L.P.)**, 27 F.3d 374 (9th Cir. 1994); **T-H New Orleans L.P. v Financial Sec. Assurance (In re T-H New Orleans, L.P.)**, 10 F.3d 1099 (5th Cir. 1993), **cert. denied** 114 S.Ct. 1833, 128 L.Ed.2d 461 (1994).
12. It is not clear whether this provision covers all revenue generated by a hotel (for example, food and beverage revenues).
13. UCC §9-103(3)(b) & (d).
14. Under §9-301(1) of the UCC, an unperfected interest is subordinate to the rights of a lien creditor. Under the

"strong arm" powers available to a trustee or debtor in possession under the Bankruptcy Code, a security interest may be avoided if it is voidable by a judicial lien creditor. **See** 11 U.S.C. §544(a).

15. Section 205 of the Act amends §365(h) of the Code to clarify and/or expand the rights of tenants.

16. Section 401 of the Act amends §362(b) of the Code to add another exception to the automatic stay.

17. See, e.g., **In re Paar Meadows**, 88 F.2d 1540 (2d Cir. 1989), **cert. denied**, 110 S.Ct. 869 (1990); **Watervliet Paper Co. v City of Watervliet (In re Shoreham Paper Co.)**, 117 B.R. 274 (Bankr. W.D. Mich. 1990).

18. Before enactment of 1994 Public Act No. 80, Michigan real and personal property taxes did not become a lien until December 1st of the year in which they were billed, and thus taxes could become "due" before they became a lien.

19. Section 204 of the Act amends §362(b) of the Code to add actions to "maintain or continue perfection" as an exception from the automatic stay, with a corresponding amendment to §546(b).

20. **See** UCC §9-403(2).

21. **See** UCC §9-403(3).

22. Section 202 of the Act amends §550 of the code to modify the liability for avoided transfers.

23. **Levit v Ingersoll Rand Fin. Corp. (In re V. N. DePrizio Constr. Co.)**, 874 F.2d 1186 (7th Cir. 1989).

24. **See** 11 U.S.C. §550(a).

SINGLE-ASSET CHAPTER 11 REAL ESTATE CASES: BAD FAITH AND NEW DEBTOR SYNDOME AFFIRMED BY THE SIXTH CIRCUIT COURT OF APPEALS

by *Lisa Sommers Gretchko**

The Summer, 1994 issue of the **Michigan Real Property Review** included an article entitled "Single-Asset Chapter 11 Real Estate Cases: Bad Faith, New Debtor Syndrome, and Other Pitfalls." That article discussed six single asset Chapter 11 real estate cases in which bankruptcy courts located in Michigan lifted the automatic stay, or dismissed the bankruptcy petition, based upon a finding that the debtor had filed the Chapter 11 petition in bad faith, or that there was no reasonable likelihood that the debtor could successfully reorganize in Chapter 11.

When that article went to print in the Spring of 1994, appeals to the Sixth Circuit Court of Appeals were pending with respect to three of the cases discussed, namely: (1) **In re Laguna Associates Limited Partnership**, 147 B.R. 709 (Bankr. E.D. Mich. 1992) (which was affirmed by U.S. District Judge Edmunds in an unreported opinion in Case Number 92-75390), (2) **In re Trident Associates Limited Partnership**, 1993 WL 761487 (Bankr. E.D. Mich. Sept. 30, 1993) (which was affirmed by U.S. District Judge Hackett in an unreported opinion in Case Number

* Lisa Sommers Gretchko is the current chair of the Debtor-Creditor Committee of the Real Property Law Section. She is a partner in Pepper, Hamilton & Scheetz and she specializes in bankruptcy and commercial litigation. She has represented secured creditors, unsecured creditors' committees, debtors and trustees, and has litigated many of the issues which arise in the context of bankruptcy law. In her commercial litigation practice, Ms. Gretchko has experience in real estate litigation. She is a frequent lecturer for ICLE on various topics. Two of her articles have been published in the **Michigan Real Property Review**: her article on the impact of bankruptcy on commercial real estate leases appeared in the Winter, 1992 issue, and her article on bad faith and new debtor syndrome in single-asset Chapter 11 real estate cases appeared in the Summer, 1994 issue.

Ms. Gretchko received her BA with honors from the University of Michigan in 1976 and was a member of the Phi Beta Kappa Honor Society. She received her JD, cum laude, from the University of Detroit in 1978, where she was awarded the National Order of the Barrister and elected a member of the Justice Frank Murphy Honor Society. In addition, Ms. Gretchko was an associate editor of the University of Detroit Journal of Urban Law in law school.

93-CV-72966-DT) , and (3) **In re Gateway North Estates**, 165 B.R. 427 (E.D. Mich. 1994).

Since the Spring of 1994, the Sixth Circuit Court of Appeals has decided the appeals in **In re Laguna Associated Limited Partnership** and **In re Gateway North Estates**.[1] These Circuit Court opinions are very interesting, and represent the latest caselaw developments in the area of "bad faith" and single-asset Chapter 11 real estate cases.[2]

1. In re Laguna Associates Limited Partnership

On July 27, 1994, the Sixth Circuit Court issued its opinion affirming the decisions of both the Bankruptcy Court and the U.S. District Court in **In re Laguna Associates Limited Partnership**, 30 F.2d 734 (6th Cir. 1994). Shortly after Laguna Associates Limited Partnership ("Laguna") filed its Chapter 11 bankruptcy petition, Bankruptcy Judge Walter Shapero granted the motion of Aetna Casualty & Surety Company ("Aetna") for relief from the automatic stay for "cause" pursuant to 11 U.S.C. §362(d)(1). Judge Shapero focused on the fact that the day before Laguna filed its Chapter 11 petition Aetna's original borrower, Beztak Company (a Michigan co-partnership), recorded a deed which transferred a project known as the Lakeside Terrace Apartments to Laguna Associates Limited Partnership, a newly formed entity whose sole general partner was Laguna General, Inc. (an asset-less corporation) and whose sole limited partner (and 99% owner) was Beztak Company. 30 F.3d at 736. Judge Shapero found:

> Essentially what we have in this case is:
>
> (a) a flawed eleventh hour attempt of Beztak and its partners to transfer the Property (and the contiguous twelve (12) acres) to this commonly and in substance similarly held and owned Debtor;
>
> (b) a transferee, asset-less Debtor which appears to have been created solely for the purpose of holding the Property and, it must be inferred, essentially isolating and separating its operations from the remaining operations of Beztak, the transferor;
>
> (c) a situation where the Property cannot itself support its expenses and required debt payments;
>
> (d) the filing of a bankruptcy in close proximity to the transfer or attempted transfer;
>
> (e) a situation where the day to day management, because it remains in the same managerial hands (of an associated entity) as it was before the transfer, will likely not change regardless of the transfer;
>
> (f) a situation, given the asset-less substance of the corporate general partner of Debtor, which materially adversely changes, certainly prospectively, the liability picture relative to the ongoing expenses of operating the Property, with no apparent means, other than the receipts from the Property itself, to sustain the Property or pay all of those ongoing expenses;
>
> (g) apparently no consideration being paid for the transfer other than the transferred interests in the Debtor, and
>
> (h) a situation where Aetna suffers the indicated adverse effects upon its bargained for relationship with Beztak.

30 F.3d at 736-737.

On appeal to District Court, Judge Shapero's opinion was affirmed. Laguna then appealed to the Sixth Circuit Court of Appeals.

In affirming both the Bankruptcy Court and the U.S. District Court, the court first clarified the standard of its review, stating that it would review a bankruptcy court order granting or denying relief from the automatic stay only for abuse of discretion, and would follow a bankruptcy court's findings of fact unless they were clearly erroneous, while conducting a plenary review of questions of law. 30 F.2d at 737.

Next, the court framed the issue before it as a narrow one, namely whether the bankruptcy court erred in granting Aetna's motion for relief from the automatic stay based upon its finding that the debtor had filed its Chapter 11 petition in bad faith. 30 F.3d at 737. The court acknowledged that, in other cases, it had already held that the debtor's bad faith filing of a bankruptcy petition constitutes "cause" for dismissal of a bankruptcy petition pursuant to Section 1112(b) of the Bankruptcy Code. Seeing no difference between the "cause" requirement for dismissal of a bankruptcy petition, and the "cause" requirement for relief from the automatic stay, the court concluded that a lack of good

faith constitutes "cause" for lifting the automatic stay pursuant to 11 U.S.C. §362(d)(1). 30 F.3d at 737-738.

The court then evaluated whether the Bankruptcy Court abused its discretion in determining that Laguna Associates Limited Partnership filed its Chapter 11 petition in bad faith. After noting that good faith is a discretionary determination based on a "multitude of factors" and emphasizing that "good faith" is an amorphous notion, based not upon one single factor, but rather a combination of factors and the totality of circumstances, the court enumerated a list of factors which evidence "bad faith" in the context of a single-asset Chapter 11 real estate case, as follows:

1. debtor has one asset;
2. debtor's pre-petition conduct has been improper;
3. there are only a few unsecured creditors;
4. debtor's property having been posted for foreclosure and the debtor having been unsuccessful in its defense of the foreclosure action in state court;
5. the debtor and one creditor have a standstill agreement in state court and the debtor has lost or has been required to post a bond which it cannot afford;
6. the filing of the bankruptcy petition allows the debtor to evade state court orders;
7. the debtor has no ongoing business or employees; and
8. the lack of possibility of reorganization.

30 F.3d at 738 (citing **In re Charfoos**, 979 F. 2d at 393, which in turn cites **In re Little Creek Dev. Co.**, 779 F. 2d at 1072-73).

Realizing that an exhaustive listing of "bad faith" factors would be impossible to construct, the court acknowledged that, in addition to the foregoing indicia of "bad faith," the "new debtor syndrome" **exemplifies** bad faith cases. The new debtor syndrome refers to circumstances in which an entity has been created or revived on the eve of foreclosure, and the troubled property is transferred to that new or revived entity in order to isolate the troubled property and its creditors. 30 F.3d at 738.

Since the Sixth Circuit endorsed the approach taken by other circuits, and did not confine "bad faith" to more limited circumstances than those relied upon by other courts, Bankruptcy Judge Shapero's analysis was upheld. In affirming both the Bankruptcy Court and the District Court, the Circuit Court held:

> When considered in light of the factors enumerated above, the evidence before the bankruptcy court was sufficient to support a finding that Laguna Associates filed its petition in bad faith. Created at the eleventh hour, the debtor was not engaged in an ongoing business, lacked a sufficient cash flow, had few unsecured creditors, and claimed as its sole asset a heavily encumbered property. Furthermore, Laguna Associates, apparently driven by a desire to prevent foreclosure on Lakeside Terrace, filed for bankruptcy just one day after gaining possession of the property from Beztak. Given these facts, the bankruptcy court's finding that Laguna Associates filed its petition in bad faith cannot be considered clearly erroneous. We thus conclude that the bankruptcy court properly determined that Aetna Casualty and Surety Company was entitled to relief from the automatic stay under 11 U.S.C. §362(d)(1).

30 F.3d at 738.

Laguna will not be appealed further. Therefore, the opinion of the Sixth Circuit Court of Appeals in **Laguna** will be binding in Michigan and clearly represents a victory for secured lenders who seek relief based on a debtor's bad faith. The two reported decisions which **Laguna** generated (one from the Bankruptcy Court and one from the Court of Appeals) are very instructive on the "do's" and "don'ts" of real estate and pre-bankruptcy planning in the context of the single-asset Chapter 11 real estate case.

2. In re Gateway North Estates, Inc.

On November 3, 1994 the Sixth Circuit Court of Appeals issued its unpublished opinion in **In re Gateway North Estates, Inc.**, 1994 WL 610167 (6th Cir. 1994), which dismissed the debtor's pending appeal as moot. The debtor, Gateway North Estates, Inc. ("Gateway") was a land-holding corporation whose only assets were three undeveloped parcels of real estate, two located in Florida and one located in Michigan. One of the Florida parcels had been purchased from James and Sallye Jude, and the Judes retained a mortgage on the property. When Gateway defaulted on the loan, the Judes began a foreclosure action in Florida state court. Five days before the foreclosure sale,

Gateway filed a Chapter 11 bankruptcy petition in the Bankruptcy Court for the Eastern District of Michigan, together with a short Plan of Reorganization which indicated an intensive effort to sell the real estate at the optimum time vis-a-vis the market conditions.

The U.S. Trustee filed a Motion to Convert the Debtor's Chapter 11 to a Chapter 7 liquidation or, alternatively, to dismiss the bankruptcy case. The Bankruptcy Court granted that motion and dismissed the bankruptcy case after finding that there was no hope for the debtor's reorganization. In an unreported opinion dated February 25, 1994, District Judge Gadola affirmed the Bankruptcy Court's dismissal of the bankruptcy case, finding that the debtor's bankruptcy filing just five days before the foreclosure sale was in bad faith, and an obvious effort to delay the sale. Gateway appealed this ruling to the Sixth Circuit Court of Appeals.

While its appeal was pending in the District Court, Gateway filed a Petition for Relief under Chapter 7 of the Bankruptcy Code. When Gateway appealed the adverse District Court ruling to the Sixth Circuit Court of Appeals, the Judes filed a motion with the Sixth Circuit Court of Appeals seeking dismissal of Gateway's appeal, claiming that Gateway's Chapter 7 filing rendered moot any issues regarding the dismissal of its Chapter 11 bankruptcy petition.

In granting the Judes' motion and dismissing Gateway's appeal as moot, the Circuit Court noted that a debtor is not allowed to have pending simultaneous petitions for relief under separate chapters of the Bankruptcy Code. 1994 WL 610167, page 2. Although Gateway attempted to explain its position to the Circuit Court by arguing that it filed the Chapter 7 petition only because it could not post the bond necessary to obtain a stay pending appeal on the issue of the dismissal of its Chapter 11 proceeding, the court rejected this position, because it would lead to an abuse of the bankruptcy process itself:

> . . . [A]llowing an appeal from the dismissal of the first petition in bankruptcy to proceed after the debtor has elected to proceed under another chapter is a waste of the finite appellate resources and circumvents a legitimate bankruptcy proceeding. This is especially true where, as in the instant case, the second petition has been allowed and liquidation of assets is proceeding.

1994 WL 6106167, page 3.

After dismissing the appeal as moot, the Circuit Court then addressed, and denied, the Judes' request for costs and sanctions pursuant to 28 U.S.C. §1927. 1994 WL 610167, page 3.

At the end of its opinion, the Circuit Court expressed its belief that **if** the appeal had not been dismissed as moot, the Circuit Court would have surely affirmed the decisions of the Bankruptcy Court and District Court, which dismissed the Chapter 11 bankruptcy petition based on a finding that it was filed in bad faith. Citing its own decision in **Laguna Associates**, the Circuit Court noted that whether the debtor filed its bankruptcy petition in good faith is a discretionary determination that must consider several factors, as follows:

> In the instant case, the debtor's two major assets were subject to foreclosures; there was no day-to-day business conducted by the debtor, and the reorganization "plan" was correctly characterized as a holding action. Under these circumstances and the cited precedent of this court, the dismissal of the Chapter 11 petition was proper.

1994 WL 610167, page 3.

Conclusion

The foregoing opinions from the Sixth Circuit Court of Appeals further entrench the "bad faith" factors described in **In re Laguna Associates Limited Partnership** and **In re Gateway North Estates**. In the aftermath of these opinions, **all** bankruptcy and real estate practitioners must understand that, while there is no single indicia of a bad faith bankruptcy filing, the Sixth Circuit Court of Appeals has concurred in the approach taken by other circuits and has cited the following factors as important ones to be considered in evaluating whether a single-asset Chapter 11 real estate case has been filed in bad faith:

1. the debtor has one asset;
2. the pre-petition conduct of the debtor has been improper;
3. there are only a few unsecured creditors;
4. the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;

5. the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;

6. the filing of the petition effectively allows the debtor to evade court orders;

7. the debtor has no ongoing business or employees;

8. the lack of possibility of reorganization; and

9. "new debtor syndrome," in which a one-asset entity has been created or revitalized on the eve of foreclosure, into which the troubled property is transferred in order to isolate the insolvent property and its creditors.

Laguna, 30 F.3d at 738.

Lenders' counsel now has even more solid ammunition with which to attack the single-asset Chapter 11 real estate bankruptcy filings. Debtor's counsel in a single-asset Chapter 11 real estate case should carefully consider how many of these factors are present before the bankruptcy petition is filed, in order to advise the debtor of the extent to which the Chapter 11 petition is vulnerable to dismissal or other attack from a secured creditor. This analysis is necessary to evaluate whether a bankruptcy petition has merit, or whether the debtor risks incurring significant costs with no real benefit.

Endnotes

1. The appeal in **In re Trident Associates Limited Partnership** remains pending after oral argument, which was held on January 26, 1995.

2. Although Section 218 of the Bankruptcy Reform Act of 1994 implicitly validates single asset chapter 11 real estate cases by enacting new provisions to deal with "small" single asset Chapter 11 real estate cases (i.e., wherein the total non-contingent liquidated secured debt is less than $4 million), these new amendments **do not** validate "new debtor syndrome" or other bad faith filings. It remains to be seen what impact, if any, this 1994 amendment to the Bankruptcy Code will have on the area of "bad faith" and single-asset Chapter 11 real estate cases.

CONSTRUCTION LIENS IN MICHIGAN — OWNER'S OR INSURER'S RISK?

by *Stephanie M. Zimmerman**

A. The Nature of An Owner's Policy.

A "title insurance policy" is a contract through which an insurer agrees to indemnify an owner, or one holding an interest in property against loss through defects in title, liens or encumbrances.[1] An owner's title insurance policy, unlike other types of property insurance, is "retrospective" rather than "prospective" in nature.[2] In other words, unlike a lender, an owner who purchases a policy, is obtaining insurance against an encumbrance which exists as of the date of policy issuance — not one which arises thereafter, irrespective of whether circumstances giving rise to the lien occurred prior to policy issuance.[3] A "defect" exists when an owner's land is subject to claims of others.[4] Construction liens are a general exception to coverage under a standard owner's title insurance policy unless the standard exceptions are omitted through negotiation.[5]

Negotiated omissions, surprisingly, may be obtained from an insurer on a case-by-case basis. Due to the economics of the industry, title insurers may agree to remove the standard construction lien exception in exchange for indemnity agreements which are to be received from the owner or the general contractor.[6] If a title insurer has agreed to omit the standard construction lien exception from an owner's policy, an unwary purchaser may be left with a false sense of security, believing that all construction liens related to circumstances occurring prior to policy issuance will be covered. While this result has traditionally occurred with respect to lenders' insurance policies,[7] Michigan courts have not addressed construction lien coverage provisions in the context of an owner's policy.

With respect to owners' policies, even where the standard construction lien exception has been omitted through negotiation, if previously unrecorded construction liens are discovered after policy issuance, a title insurer may, nevertheless, decline coverage under an alternative standard policy clause that excludes

* Stephanie M. Zimmerman is a member of the law firm of Miro Miro & Weiner in Bloomfield Hills, Michigan and maintains a practice with an emphasis in commercial real estate matters. She represents developers, lenders, contractors, secured creditors, and retailers in both transactional and litigation contexts. Ms. Zimmerman is a 1982 graduate of Michigan State University and received her JD, cum laude, from the Detroit College of Law in 1985. She is admitted to practice in Michigan and Illinois.

coverage if a lien "attaches or is created" after the effective date of the policy.[8] The Michigan Construction Lien Act (the "Act"),[9] however, may provide the purchaser of a commercial project with an avenue to overcome an insurer's declination of coverage.

Under the Act, construction liens, unlike judicial liens or security interests, do not necessarily "attach" upon recording. Instead, under the only provision of the Act which addresses the question of "attachment," construction liens are deemed to "attach as of the date of the commencement of the building, erection, or other improvement, regardless of the time when or the person by whom the particular work was done or the materials furnished for which a lien is claimed."[10] Recording of a construction lien, unlike other liens, is necessary to preserve the lien, not to "create" the lien.[11]

In Michigan, unlike many other states, construction liens are deemed by statute to "relate back" to the date on which work was first performed on the project *by any contractor*, regardless of whether the given contractor filing a lien performed work after the date a title policy was obtained.[12] If there was a contract with the general contractor, executed prior to policy issuance, and **any** "actual physical improvements" were started prior to policy issuance, a lien related to work performed after policy issuance may have retroactive application and, therefore, in this author's opinion, may be deemed to "attach" prior to policy issuance.[13]

B. Michigan's Construction Lien Act.

Under the Act, a properly perfected construction lien will take priority over "all other interests," including the interests of a *bona fide* purchaser, mortgagee, or judicial lienholder, so long as any such "other interest" was recorded subsequent to the "first actual physical" project improvement.[14] As between construction lienholders, their claims have equal priority.[15] The intent of the legislature was to ensure that subcontractors such as masons or painters, whose work was necessarily performed late in the project lifetime, were afforded the same protection as excavators, whose work was necessarily performed earlier.[16]

Michigan's Act, however, goes beyond the protection afforded to contractors in many other states, in that the Act allows a construction lienholder's interest to encumber the interests of a "bona fide purchaser" or new owner having no notice of a potential lien.[17] Indeed, under the Michigan Act, even "though no part of the labor performed or materials furnished for which [a] lien is claimed was done or performed until after execution and recording . . . "of a deed or mortgage, the lien will nevertheless attach as of the date of the commencement of the building, erection or other improvement." It is the "physical construction" date upon which the first permanent project work is done that fixes the time "to which all mechanics' liens relate back," irrespective of property interests subsequently given, obtained or transferred.[18] Yet, neither the legislature nor the Michigan courts have addressed the issue of whether a new owner can expect title insurance coverage for liens which are deemed to relate back.

C. Policy Considerations And Related Authorities.

Legal authorities from other states provide little guidance to interpretation of the Michigan Act, because state laws vary considerably, even in those states which utilize a relation-back doctrine.[19] Cases addressing whether an insurer must provide coverage to a property owner for unrecorded tax liabilities offer some guidance *via* public policy considerations, but those cases are not necessarily consistent nor directly analogous to a construction lien situation. For instance, in **Butcher v Burton Abstract & Title Company**,[20] the court found that where "none of the [assessments] were *due* at the time the title insurance was issued," no coverage was required.[21] Conversely, however, in **U.S. v City of Flint**,[22] where the property purchased had a "known taxable status," but "tax liability be[came] due and payable at a later date," an "inchoate" (though unrecorded) lien was found to be created prior to policy issuance, clouding title to the property, lowering its value, and, hence, triggering coverage.[23] The underlying principle utilized in deciding **U.S. v Flint**, was that a title insurer, unlike an owner, has "a duty . . . to remain aware of current developments of the law in the area it purports to cover."[24] Per the court:

> The sole object of title insurance is to cover possibilities of loss through defects that may cloud title. It is not mere guesswork, nor is it a wager. It is designed to be predicated upon careful examination of the muniments of title, an exhaustive study of the applicable law and the exercise of expert contract draftsmanship. Some defects will be disclosed by a search of the public transfer records; others will be disclosed only by a physical examination or a survey of the property itself. Often the existence of title defects will depend upon legal doctrines and judicial interpretations of various applicable statutes. Since the average purchaser has

> neither the skill nor the means to discover or protect himself against the myriad of defects, he must rely upon an institution holding itself out as a title insurer.[25]

In other words, the carrier assumed the risk of inchoate liens.

This economic rationale, as used in a tax assessment/owner's policy context, was the same as that used in the construction lien context in **American Savings** when the court was interpreting the terms of a lender's policy.[26] Per **American Savings**, courts should not relieve "an insurer of a once attractive decision that has soured."[27] While there is no precedential authority which uses this rationale in a construction lien/owner's policy context, in this author's opinion there is no reason to believe that it should not be similarly applied.

D. Recommendations Concerning Coverage Risk.

Purchasers of property under construction should be aware that a title insurer may decline coverage for valid unrecorded construction liens which are discovered after policy issuance, even if the parties omitted the construction lien exception through negotiation. Arguments in favor of coverage, however, do exist because, in Michigan, the insurer may bear the risk that unrecorded liens will be deemed to relate back to, and attach at, a time prior to policy issuance. Although this result seems potentially inconsistent with the concept that an owner's title insurance policy is "retrospective," rather than "prospective," in nature, title insurers may, due to "competitive forces," be paid, *via* premiums, to assume the risk for such potential title problems.[28] Following the public policy rationale set forth in **American Savings**[29] and **U.S. v Flint**,[30] a particular insurer, in omitting the construction lien exception, may be held to its original "judgment call."[31]

Endnotes

1. **United States v City of Flint**, 346 F.Supp. 1282, 1284 (E.D. Mich. 1972).
2. **American Savings and Loan Association v Lawyer's Title Insurance Corporation**, 793 F. 2d 780, 781 (6th Cir. 1986).
3. **Id.** See also **Firstland Village Associates v Lawyers Title Insurance Company**, 284 S.E. 2d 582 (S.C. 1981), **Trenton Potteries Co. v Title Guarantee & Trust Co.**, 176 N.Y. 65, 68 N.E. 132 (1903); **Butcher v Burton Abstract Title Co.**, 52 Mich. App. 98, 216 N.W.2d 434, **cert. denied**, 419 U.S. 998 (1974).
4. **City of Flint**, 346 F. Supp. at 1284.
5. American Land Title Association ("ALTA") Owners Policy 1970, amended as of 1987 and 1992, is typically used for commercial projects. See ALTA Owner's Policy Revised 10/17/92, Section II-2, and Schedule B, ¶3.
6. See **American Savings**, note 2, **supra**; see also **U.S. v Flint**, note 1, **supra**, 346 F.Supp. at 1285.
7. **Id.** at 783. See also **Swindle v St. Paul Fire & Marine Ins. Co.**, 444 S.W.2d 147 (1969).
8. ALTA Owners Policy, Exclusions From Coverage ¶3(d). The insurer may also attempt to decline coverage under exclusion ¶3(a), which precludes coverage for defects "created" by the insured, claiming that the owner "created" the lien by failing to pay subcontractors. If someone other than the current owner created the contractual obligation relating to the lien or is handling disbursements, however, this exclusion will be inapplicable absent intentional action by the owner; negligence is insufficient. **RTC v Ford Mall Associates**, 819 F. Supp. 826 (D. Minn. 1991).
9. MCL §570.1100 **et. seq.**
10. **Marinich, Inc. v Michigan National Bank**, 193 Mich. App. 447, 452 (1992), **citing Kay v Towsley**, 113 Mich. 281, 283, 71 N.W. 490 (1897).
11. MCL §§ 570.1107, 570.1111.
12. MCL §570.1100 **et. seq**, see MCL §570.1119.
13. If a new construction contract was executed by a new owner after policy issuance, the relation-back doctrine will not apply. If a pre-transfer contract is being completed, however, the relation-back doctrine will apply. **Marinich**, 193 Mich. App. at 453-454.
14. MCL §570.1119.
15. MCL §570.1119(l).
16. **Hodgins v Marquette Iron Min. Co.**, 503 F.Supp. 88 (E.D.Mich. 1980).
17. **Matter of Hamlin**, 34 B.R. 673 (Bankr. E.D. Mich. 1983).
18. **Marinich, Inc. v Michigan National Bank**, 193 Mich. App. 447, 452 (1992), citing **Williams & Works, Inc. v Springfield Corp.**, 408 Mich. 732; 293 N.W.2d 304 (1980).
19. See for example, **Barr v Masterpiece Homes**, 1994 WL 385998 (Oh. App. July 21, 1994); **Sterling Mirror of Maryland, Inc. v Rahbar**, 90 Md. App. 193, 600 A.2d 899 (1992); **Valdez v Diamond Shamrock Refining and Marketing Co.**, 820 S.W2d 955 (Tx 1991); **Douthit v Wilkes**, 480 So.2d 547 (Ala.), **on remand**, 480 So.2d 588 (1985); **Chagnon Lumber Co., Inc. v Stone Mell Construction Corp.**, 124

N.H. 820, 474 A.2d 588 (1984); **Wes Podany Construction Co., Inc. v Nowicki**, 120 Wis.2d 319, 354 N.W.2d 755 (1984); **Crane Erectors and Riggers, Inc. v La Salle National Bank**, 125 Ill. App.3d 658, 466 N.E.2d 397 (1984); **Starek v TRW, Inc.**, 410 So.2d 35 (Ala. 1982);

20. 52 Mich. App. 98 (1974).
21. **Id.**, at 101-102.
22. 346 F.Supp. 1282 (E.D. Mich. 1972).
23. **Id.**, at 1286.
24. **Id.**
25. **Id.**, at 1285.
26. 793 F.2d at 781.
27. **Id.**, at 783.
28. **American Savings**, 793 F.2d at 782. "Insurers, just as other makers of contracts, are dependent upon the fiscal attractiveness of their proposals in order to induce would be purchasers to buy . . . the attractiveness . . . is found in the broadness of coverage, or the lack of limiting conditions . . ." **Id.**, at 783, **citing Swindler v St. Paul Fire & Marine Ins. Co.**, 223 Ten. 304, 444 S.W.2d 147, 150 (1969).
29. 793 F.2d at 783.
30. 346 F.Supp. at 1282.
31. For a discussion of various risks assumed by title insurers due to market forces, see Urban, "Future Advance End Title Insurance Coverage," 15 **Wake Forest Law Review**, 329 (1979).

RECORDING CORRECTIVE DOCUMENTS

by *Willard G. Moseng*

As careful as scriveners may be, it occasionaly happens that they make mistakes in drafting real estate documents. Many times the error is not discovered until the document in question returns from recording. In my experience, the problem comes up most frequently in recording single-family residential mortgages. The question the scrivener must ask, once the error is discovered, is how to correct the error. Several soutions are available: 1) draft an amendment or modification of the document and record that, 2) draft the document correctly, and record the new document, or 3) correct and re-record the original document.

The first option is the most straightforward approach and least subject to unexpected consequences. It suffers, though, from several problems. Perhaps the largest problem is that it requires drafting a document that is very specific to the transaction. If the transaction itself is complex and has required significant drafting anyway, such an added burden is not really a problem. However, when there is a technical error in a form document, such as a lending institution's residential mortgage, the drafting of an amendment may be much more complicated than initially completing the form. In such a situation, the scrivener is generally a person with little legal training, and the drafting of an amendment by such a person might create more problems than it solves. Another problem that a lending institution may have with an amendment is the reluctance of the borrower to sign another document. Borrowers seem to be comfortable with form documents. If a document is specially drafted, the borrower may feel the need to consult an attorney before signing, or might simply refuse to sign.[1]

Redrafting the document correctly, having the parties execute the new document, and then recording it (option 2 above) is also a fairly simple, comprehensible approach. It does, however, offer some pitfalls. The first issue depends on the type of document involved and the substance of the error. Title Standard 3.3 states:

> A grantor who has conveyed by an effective, unambiguous instrument cannot, by executing a subsequent instrument, make a substantial change in the name of the grantee, decrease the size of the premises or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first grant, even though the subsequent instrument purports to correct or modify the former.[2]

Common sense indicates that this would be true, since the grantor has already conveyed an estate to the grantee.[3] The grantee owns what was conveyed. The grantor

cannot then take some or all of it back by recording another conveyance.

By implication, the Title Standard appears to allow other types of modifications by a subsequent instrument. For example, a grantor could enlarge the size of the premises, or otherwise increase what was conveyed, so long as the grantor actually holds that interest, since the subsequent instrument would act as a new conveyance. The grantor could probably also, in a subsequent instrument, correct drafting mistakes, such as the omission of one or more witnesses, the failure to include an acknowledgment, and so forth, so long as the corrections did not attempt to "derogate from the first grant." Such changes are important for evidentiary reason, among others.[4]

From the perspective of a lender, recording a new mortgage is somewhat easier than recording an amendment in residential transactions. Such an approach has the advantage of presenting the borrower with a document that looks very much like the original document, and hence should be no more unfamiliar or intimidating. On the other hand, some borrowers, not understanding the difference between a promise to pay (the mortgage note) and security for that promise (the mortgage), might raise the issue of whether the second document gives rise to a second debt.

Regarding the recording of a second version of documents, parties may be reluctant to date the second version earlier than the date on which it is executed. In the case of date-sensitive documents, the date of execution of the second version may be beyond the particular deadline in question, even though the original document was within the proper time frame.

Finally, in drafting a second version of a document, there is always the possibility of introducing new errors.

The third option listed above, correcting and re-recording the original document, is very similar to the second, but has some important distinctions, and raises some different issues. Michigan has no statute expressly permitting the re-recording of a document. It would seem, however, that the effect of re-recording should be the same as putting an entirely new document on record. The advantage with re-recording is that the only change being made in the document is the one that is needed for correction. All information that was originally correct will not have to be entered on a new document.

In re-recording a document, a question arises regarding the formalities that need to be observed in making the correction. In many jurisdictions, a conveyance is void if it is not executed with the proper formalities, such as witnesses and acknowledgment.[5] That means that any change or correction in a conveyance that is not properly witnessed and acknowledged is void.[6] In Michigan, this is not the case.[7] A deed[8] or mortgage[9] that lacks sufficient witnesses, or is not properly acknowledged, is still valid between the parties to the transaction. Such a document, if recorded (although the register of deeds should not record it[10]), would constitute "legal notice,"[11] but a copy of the document from the register of deeds could not be admitted in evidence unless the document had been recorded for ten years or more.[12] If, then, a change in the document is not made with the formailities of two witnesses and an acknowledgment, there remains the question of whether a certified copy of the re-recorded conveyance would be admissible as evidence in court.[13]

In most cases where a correction to a conveyance is made, the grantor subscribes his or her initials next to the change.[14] This is true for both a document in which an error is discovered at closing, before the document has been executed or recorded, and for a change in a document that will be re-recorded. However, it is highly unusual for a grantor in either case to actually sign next to a change, and have the signature witnessed and acknowledged.

Michigan courts have held that if there is an evident change in a document, it is presumed that the change occurred before execution and recording, and the burden is on the party denying this to prove otherwise.[15] Therefore, a change in the document prior to initial recording should not prevent the document from being entitled to recordation, and a certified copy of the document from the register of deeds would be admissible in court. However, in the case of a re-recorded document, it is clear from the two documents on record that the original document actually **was** executed before the change, since there is an executed copy of the document without the change on record prior to the re-recorded document with the change. Because the presumption would not then apply, and because the statutory recording requirements most likely are applicable to changes in a document, there may be a serious question as to whether a copy of the re-recorded document could be introduced in court, since **the change** was not made with the formalities necessary to entitle a document for recording, even though the original document may have complied with those formalities.

But what if the change is in something that is not material to the conveyance, but is still essential for recording (and missed by the register of deeds the first time the document was recorded), such a party's address, the name of the scrivener, or the typed or printed name of a witness, party or notary? The case of **Coit v Starkweather**, 8 Conn 289 (1830), gives some guidance as to how a court might handle this question.[16] In Connecticut at the time of the case, the failure to properly witness or acknowledge a deed made it void. The case involved a deed to Elijah Wheedon. In actuality, there were two Elijah Wheedons in the same community, father and son. During his father's life, the son styled himself "Elijah Wheedon, jr.," but after his father died, he resorted to simply "Elijah Wheedon." Prior to the father's death, the son went to the recorder's office and had the record of the deed changed to reflect that it was "Elijah Wheedon, jun." When the substance of the deed was later litigated, the court was urged to hold the deed void, since the change was not properly witnessed or notarized. However, the judge held that the change was immaterial. He would have allowed parol evidence to resolve the matter of which Elijah Wheedon was intended. Therefore, it made no difference that the deed was altered.

For the less material, ministerial-type changes, such as addresses, and typed or printed names, Michigan courts would be well guided by **Coit**. Such matters are technically required for recording, but have no bearing on the substance of the document. They do not affect the validity of the document.[17] A person makes such changes simply to clarify the situation, much as in **Coit**. A court should not penalize a party under those circumstances, where the party could have simply provided the required information later if a question concerning the conveyance were ever litigated.

It seems that the effect of re-recording a document depends, in general, on the nature of the change. If the change attempts to diminish or limit what was conveyed originally, re-recording is ineffective,[18] and the originally recorded document stands or falls on its own merits. If the change is material, but does not reduce or limit the interest conveyed, it may be necessary to properly execute the **change**, together with witnesses and an acknowledgment, in order for a copy of the re-recorded document to be admissible in court. If the change affects the authorization to record the document, such as adding a witness or acknowledgment, it would seem that this could be done, and a copy of the re-recorded document would be allowed in evidence.[19]

The ultimate solution for most of these problems is title insurance. If a recorded document is incorrect, and the parties decide that the error should be corrected, the title company may be the best party to determine what should be done. If the title company believes that re-recording a corrected document is sufficient, the party concerned should request that the final title policy reflect the changes. It is unlikely that most changes dealt with through re-recording, by themselves, would be litigated. The more likely the chance for litigation, or the more serious the consequences if there is an error, the more likely a title company will insist on an amendment signed by both parties to the transaction. The less likely the litigation, or the more minimal the nature of a loss coming from such an error, the more appropriate the re-recording the document would be.

Endnotes

1. Consulting an attorney should not be discouraged, but is time-consuming. Further, lenders are frequently reluctant to have the borrower hire an attorney because of concern for delay the attorney might cause in reviewing the entire transaction **de novo**. The borrower's refusal to sign is now frequently dealt with by requiring the borrower to sign at closing a form indicating he or she will cooperate in making technical corrections after closing.
2. Michigan Land Title Standards (5th Ed), Standard 3.3.
3. The Title Standards Committee apparently believes in the self-evident nature of the standard since no authority is cited for the proposition, an omission that apparently occurs nowhere else in the Title Standards.
4. See, e.g., Michigan Land Title Standards (5th Ed), Standards 3.4 and 3.5 The occurrence of such a "technical" error indicates that the register of deeds in the particular county has made a mistake, since the instrument should not have been recorded if not in the proper form (MCLA 565.201). These types of errors do occur, however.
5. Anno: **Deed — Alteration After Attestation**, 67 ALR 364.
6. See **Coit v Starkweather**, 8 Conn 289 (1830). In **Coit**, the court was urged to delcare the **original** document void because the change in it was not properly witnessed or acknowledged.
7. MCLA 565.604.
8. **Irvine v Irvine**, 337 Mich 344, 60 NW2d 298 (1953).
9. **Turner v Peoples State Bank**, 299 Mich 438, 300 NW 353 (1941).
10. MCLA 565.47.

11. Query whether "legal notice" as used in MCLA 565.47 means the same as constructive notice. That would seem to be the intent, but that is not entirely clear.
12. MCLA 565.604.
13. Michigan Land Title Standards (5th Ed), 3.5.
14. Changes in which there is no evidence (such as the grantor's initials) that the grantor agreed would most likely be invalid as self-serving. See, however, **Coit v Starkweather, supra**.
15. **Arnold v Bechtel**, 174 Mich 147, 140 NW 610 (1913).
16. Because changes in documents are generally valid between the parties, there are few cases on the issue of such changes, hence the citation to an 1830 *Connecticut case.*
17. **Irvine, supra; Turner, supra;** MCLA 565.604.
18. Michigan Land Title Standards (5th Ed), Standard 3.3.
19. Michigan LandTitle Standards (5th Ed), Standard 3.5.

THE UNINTENDED INDEMNIFICATION OF A LANDLORD

by *Arthur A. Horning*

Being typically conservative in their writing, real estate attorneys resist change. After all, we think, traditional terms and arcane phrases are "time tested," "well understood" and have "agreed upon" meanings. Recently, however, I was reminded that we may be required to rewrite our documents and to challenge our use of formulaic expressions in order to say what we mean.

Several years ago, my company acquired a small chain drugstore company along with the exisitng leases for the company's stores. Subsequently, in two separate and unrelated incidents at two different locations, two customers fell in the store parking lots and sued both the drugstore and the landlord for negligence in failing to maintain safe premises. Both incidents were nearly identical in terms of causation — icy conditions in the parking areas — and both cases were assigned to the same judge.

I initially assumed that, because the *situs* of the injuries was the "common area" of the shopping centers, there was little likelihood that the court would hold my company (the tenant) either liable to the plaintiff or required to indemnify the landlord for the landlord's own failure to maintain a safe parking lot. However, in one case the judge granted landlord defendant's motion for summary disposition on the issue of indemnification, holding that the tenant was obligated to indemnify it for the claimant's injuries. In the other case, the trial court granted the drugstore's motion for summary disposition on both the plaintiff's negligence claim against the drugstore and the landlord's claim against the drugstore tenant for indemnification.

The apparent inconsistency in outcome resulted from each lease's provision for indemnification of the landlord by the tenant. The attorney who drafted the second lease clearly conveyed the essential concept inherent in most leases for retail space, i.e., that the tenant is ordinarily responsible for what occurs inside its store and not for what occurs outside the store. The attorney who drafted the first lease had left this concept ambiguous.

In my experience, the key general liability issues between a landlord and a tenant are (a) the duty to repair, replace and maintain, (b) the duty to indemnify, defend and hold harmless, and (c) the duty to insure. Logically, the parties first agree who is to satisfy the legal obligation to provide and maintain safe premises ("repair, replace and maintain") and who will be legally responsible for a breach of this covenant ("indemnify, defend and hold harmless"). The covenant is then "collateralized," if you will, by their

mutual agreement to obtain insurance to cover their contractual liability so that a change in financial circumstances will not affect their ability to perform their obligations.

Unless one side or the other in a lease negotiation has overwhelming leverage to dictate the terms of the agreement, a landlord and a tenant should be able to agree on the principle that responsibility for premises liability claims should be left to the party who has actual control of the means to guard against the cause of the injury. A person who is injured as a result of falling on ice in a parking lot, water on the floor of a store, or some other type of hazard should be able to pursue a claim against the landlord or the tenant who retains responsibility to maintain that area in a safe condition, but either negligently or intentionally fails to sufficiently warn of the hazard or remove it. Both parties also should be able to agree to obtain comprehensive general liability insurance to protect against catastrophic loss occasioned by such an incident. In addition, even though the landlord may be able to pass along the cost of the insurance premiums for its insurance coverage to the tenant on a prorated basis, it remains primarily liable for the loss and should agree to indemnify and hold the tenant harmless, endorse the tenant as an additional insured on the insurance policy, and defend any suit. Similarly, the tenant should be able to agree to remain primarily liable for injuries occurring inside its store, to obtain insurance coverage for this liability, to endorse the landlord as an additional insured under the policy, and defend any suit.

Unfortunately, leases often address these concepts in separate provisions covering several pages and/or sprinkle them throughout the lease. If the drafter is not careful, the concepts may conflict with each other.

With respect to the leases concerned in the litigations described above, the key concepts with respect to general liability issues were addressed substantially in the same way. In the first lease (the one under which the landlord was indemnified by the tenant), the landlord impliedly was obligated to operate, maintain and repair the "common facilities" and explicitly was to be reimbursed the cost of such operation, maintenance and repairs by the tenant, prorated on the basis of the relationship of the size of the tenant's premises to other leasable space in the shopping center. The same generally held true under the second lease. The tenant was likewise in each lease required to repair and maintain the leased premises. Thus, the landlord exercised control over the common areas and the tenant controlled the leased premises.

In the first lease, the landlord was obligated to obtain public liability insurance covering the common areas of the shopping center, but coverage was limited to casualties relating to the landlord's obligations under the lease to repair the building, to rebuild in the event of a fire or other casualty, and to rebuild in the event of a total condemnation. Similarly, the landlord was obligated to indemnify, defend and hold the tenant harmless for its failure to do any of these three insured matters. The lease was silent as to the obligation of the landlord to insure the common areas or to indemnify the tenant for claims arising out of the common areas. This lease, which was executed in 1979, may have assumed that the landlord would self-insure for public liability in the common areas. However, if this was intended, it was never expressed in writing. Nonetheless, the tenant was obligated to indemnify, defend and hold the landlord harmless for:

> . . . any liability of any nature whatsoever arising out of any accident or occurrence (except for accidents or occurrences relating to [l]andlord's obligation [for repairs to the building, rebuilding in the event of a fire or other casualty, or rebuilding in the event of condemnation]) upon or directly related to [t]enant's use or occupancy of the Demised Premises, ... In the event the amount of any such claim shall exceed the limits of [t]enant's public liability coverage, [t]enant shall procure at its own expense legal counsel for such defense, approved by [l]andlord.

The second lease also was somewhat unconventional in its approach to the obligations to insure and indemnify; landlord was to procure general liability insurance on the common areas and tenant was to obtain general liability insurance on the leased premises. But, again, tenant appears to have the sole responsibility to:

> . . . protect, indemnify, save and keep harmless [landlord] against and from any and all claims against and from any and all loss, cost, damage or expense arising out of any failure of [tenant] in any respect to comply with and perform all the requirements and provisions of this Lease.

Of course, neither of these lease provisions *per se* conflicts with the general understanding between a landlord and a tenant concerning their respective

liabilities stated above. So, why did the first case hold the tenant responsible to indemnify the landlord for the injuries to the plaintiff when the second case held just the opposite (and both holdings were the result of summary disposition motions decided by the same judge)? The result of each case turned on the interpretation by the court of the wording and the purpose of the indemnification provisions and provides a warning to us all to say what we mean.

In the first case, the trial judge held that the phrase ". .. any accident or occurrence . . . upon or directly related to Tenant's use or occupancy of the Demised Premises. . ." included an indemnification under circumstances in which the injured party testified that she had parked her car in the parking lot and fell when she was walking to the drugstore. This meant that her injuries were "directly related" to the drugstore's use of the leased premises and the drugstore was required to indemnify the landlord for the incident.[1] In the second case, the trial judge appears to have restricted the physical scope in which the obligation to indemnify operated. Thus the phrase "on or about the leased premises", in the context in which it was stated, referred to or was synonymous with the phrase "within the leased premises".[2]

In drafting leases these cases point clearly to the maxim to *say what you mean*. If your client is the tenant, be certain that the indemnification provision is restrictive, not expansive. I would suggest the following:

> Tenant agrees to indemnify, defend and hold Landlord, its agents, employees and assigns, harmless with respect to all claims arising out of the negligence or the intentional acts or omissions of Tenant, its agents and employees within the leased premises and for which Tenant has agreed to obtain comprehensive general liability and property damage insurance coverages.

If your client is the Landlord, the same, but reciprocal, provision should be acceptable:

> Landlord agrees to indemnify, defend and hold Tenant, its agents, employees and assigns, harmless with respect to all claims arising out of the negligence or the intentional acts or omissions of Landlord, its agents and employees concerning Landlord's obligations for repair, replacement and maintenance of the Shopping Center (including the common areas) and for which Landlord has agreed to obtain comprehensive general liability and property damage insurance coverages.

Three corollaries follow from the "maxim". First, *don't assume whom your reader is*. Although you may have had years of experience in preparing real estate documents, your client's bank account may be placed at risk by someone other than you who does not understand the nuances contained in complex lease provisions.

Second, *if necessary, give examples*. Where possible, it is perfectly reasonable to digress in the text of the lease to ensure that the intent of the parties is conveyed, even to the extent of inserting precatory language in provisions such as those outlined in this article.

Third, *keep your bases covered*. The "key concepts" discussed above must be directly dealt with in the lease and not left open to subsequent interpretation or interpolation. Discuss each party's responsibilities for repair, replacement and maintenance so that you have made provisions for each. Clearly describe the obligation of indemnification for the intentional or negligent failure to properly carry out these responsibilities and provide for adequate insurance coverage to secure the benefits of the preceding provisions without regard to the future financial capabilities of the parties.

Commercial real estate leases are complex documents, intimidating to the novice and a potential source of confusion and misunderstanding. They are also documents with a very long life — perhaps of ten, twenty, thirty years or more. Because those who originally prepared them may not be available to help interpret them, great care must be exercised in their drafting, particularly with regard to words whose use has had a long history, but whose meaning may change over time. Be clear and concise in order to be certain that you say what you mean.

Endnotes

1. The ruling of the trial judge was upheld by a 2 to 1 vote in the Court of Appeals. The majority opinion commented that the right of indemnification will be enforced if the wording in the indemnification provision in the lease is clear.

2. A popular lease form widely used in the Detroit area — — a form which has been "time-tested" yet clearly needs revising — is the Detroit Real Estate Board Form — Business Property Lease (the "Detroit Board Form"). Section 14 of Form 113-A of the Board Form provides:

   > The Tenant agrees to indemnify and hold harmless the Landlord from any liability for damages to any person or property in, on or about said leased premises from any cause whatsoever...

   It can hardly be said that this provision for "in, on or about" liability is readily distinguishable from either of the two lease provisions discussed above.

SIXTH CIRCUIT FINDS TURNER "SUBSTANTIAL CONTINUITY" RULE OF SUCCESSOR LIABILITY INAPPLICABLE OUTSIDE THE CONTEXT OF PRODUCTS LIABILITY

by *Saulius K. Mikalonis, Esq.*

This case note updates the author's article entitled "Successor Corporation Liability for Environmental Claims in Michigan and the Sixth Circuit" in the Spring, 1994 issue of the **Michigan Real Property Review**. The article addressed bases for imposing environmental liability on a successor corporation and described an expansion of the mere continuation exception to asset purchase transactions known as the "substantial continuation" or "continuity of enterprise" rule recognized by the Michigan Supreme Court in **Turner v Bituminous Casualty Co.**[1] The substantial continuation rule had at that time been applied by the District Court for the Eastern District of Michigan in **City Environmental, Inc. v U.S. Chemical**.[2]

In **City Environmental**, the district court ruled that the purchaser of a solvent recovery facility was not responsible for the off-site environmental liabilities of the seller. The court based its decision on the application of the substantial continuity rule, finding that the rule could not be used to impose liability upon the purchaser because there was no nexus between the plaintiff and the predecessor's off-site liabilities.[3] Although the **Turner** decision was a products liability case, the district court found that in the environmental context, the substantial continuity rule would apply.

On November 10, 1994, the Court of Appeals for the Sixth Circuit rendered its decision on the appeal of the district court's decision.[4] The Sixth Circuit concurred with the district court that City Environmental was not liable for the off-site liabilities of the asset seller. However, the court of appeals disagreed that the substantial continuity rule applied in Michigan outside the context of products liability cases.

The court of appeals framed the pertinent inquiry as "under what circumstances a purchasing corporation which operates as a continuing enterprise may be liable for the selling corporation's liabilities." Relying on a prior decision, the court of appeals recognized that in assessing the liability of a successor corporation for CERCLA obligations, a court must apply the particular state's corporate law principles. According to Michigan law, the court of appeals recognized that a purchaser of assets does not normally acquire the liabilities of the seller.

The court of appeals then turned its attention to the recognized exceptions to the general rule of no liability for the purchaser in an asset purchase. **Turner**, according to the court of appeals, expanded the mere continuation rule by holding asset purchasers liable when no common identity of ownership existed

between the purchaser and the seller.[5] However, the Michigan Supreme Court's decision in **Turner** limited the application of this expansion to the products liability arena. In the court of appeals' view:

> [I]t seems clear from the reasoning, as well as the language and architecture of the court's opinion, that the expanded **Turner** exception is limited to products liability cases.[6]

In addition, the court of appeals noted, no lower court had applied **Turner** to cases outside the realm of products liability.[7] As a result, the court of appeals concluded that while it was error for the district court to apply the continuing enterprise exception in this case, the lower court's grant of summary judgment in favor of City Environmental was nonetheless the proper result.

The Sixth Circuit has decided that Michigan does not recognize an expansion of the four recognized exceptions to asset purchase transactions identified in the author's prior article. Unless the Michigan Supreme Court expands the rule in a future decision, the expansion of the mere continuation rule described in **Turner** will apply only in the context of products liability cases. Therefore, in non-products liability cases, courts should impose liability only where there is continuity between the shareholders or employers of the acquiring corporation and the selling corporation.

Endnotes

1. 397 Mich 406 (1976).
2. 814 FSupp 624 (ED Mich, 1993).
3. In addition, the district court found that the transfer of assets was not fraudulent and the purchaser did not impliedly assume the seller's responsibilities for off-site liabilities.
4. **City Management Corp. v U.S. Chemical Co., Inc.**, ___ F3d ___, 1994 WL 621146, 39 ERC 1801 (CA 6, Nov. 10, 1994).
5. 1994 WL 62114, *6.
6. 1994 WL 621146, *7.
7. **Id.**

ENTIRETIES PROPERTY: CERTAINLY UNSETTLING NEWS

by *John S. Regan**

Sage advice and counsel: "Don't worry, that federal tax liability is assessed only against you, not your wife. The Internal Revenue Service lien does not attach to entireties property. Your house is safe." This advice has been considered solid at least since 1971, when the opinion in **Cole v Cardoza**, 441 F2d 1337 (6th Cir., 1971) was issued.

But tax counsel recently began questioning this advice when their routine requests for IRS "non-attachment" letters were denied. It seemed that a case was pending, and the IRS was waiting for a decision before issuing any further **Cardoza** letters.[1] The Western District of Michigan recently issued its opinion, and it is not taxpayer-friendly. **Kraft v USA**, Civil Action 1: 93-CV-306 (WD Mich, 1994) concluded that a federal tax lien did, in a way, attach to entireties property even though the tax was the liability of only one spouse. Michigan tax practitioners have probably received their last non-attachment letter.

Kraft concerned a husband's separate income tax liability relating to tax years 1979 through 1987. The IRS filed its Notice of Federal Tax Lien on March 30, 1989. Apparently in preparation for a bankruptcy,[2] the Krafts quitclaimed their entireties residence to Mrs. Kraft on August 28, 1989. Mr. Kraft filed his bankruptcy petition on January 30, 1992.

Mrs. Kraft, the plaintiff, brought her quiet title action when the IRS refused to issue its lien discharge in connection with Mrs. Kraft's proposed sale of the home. To preserve the sale, Mrs. Kraft escrowed one-half of the sale proceeds to be disbursed pursuant to the court's decision. Although Mr. Kraft received his bankruptcy discharge and the bankruptcy case was closed, the IRS contended that it was entitled to one-half of the sale proceeds in relation to his tax indebtedness.

The thrust of the Service's argument is that MCL 557.71 (the "Act"), adopted in 1975, changed the nature of the interest spouses hold in entireties. The Act provides that:

* John S. Regan is a graduate of the Thomas M. Cooley Law School (J.D. 1980) and the University of Florida (M.A., in Taxation, 1982). The coauthor of **Close Michigan Corporation**, Mr. Regan concentrates in the area of commercial law and business tax planning.

> [a] husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety.

From that language, and relying upon certain post Act 6th circuit cases, Judge Quist held that

> [i]n the instant case, plaintiff and Mr. Kraft originally held the real property at issue as tenants in the entireties and then made a joint conveyance of the property to Mrs. Kraft. At the time that the joint conveyance was made, the entireties estate terminated. At that point, each spouse took an equal half interest in the estate and the government's lien attached to Mr. Kraft's interest.

Therefore, the government was awarded the one-half of the sale and proceeds.

The actual legal theory upon which **Kraft** is decided is that while the property remains in an entireties state, each spouse has an indivisible interest in the whole. However, each spouse also holds an inchoate individual interest in the entireties property that ripens upon termination of the entireties estate. Although a judgment or tax lien does not attach to the indivisible interests of the spouses, it does attach to the inchoate individual interest of the debtor/spouse. No levy or execution is possible while property enjoys entirety status. Upon termination, however, levy or execution can be made upon the separate individual interests of the debtor/spouse.[3]

The difference between pre-**Kraft** non-attachment and post-**Kraft** attachment of the potential or inchoate individual interest of a debtor/spouse is substantial. For instance, prior to **Kraft**, it was common for a title company to insure over tax liens relating to tax liabilities of only one spouse. Many lenders would fund refinancings to take mortgages where such liens existed relying upon **Cardoza** letters. Whether lenders will continue this practice is now questionable.

Many other legal uncertainties arise that may be music to an attorney's ears but, unfortunately, not to the affected husbands and wives or, for that matter, to those contemplating dissolution of their marriage with attendant property settlements.

Endnotes

1. A "Cardoza" letter was one issued by the District Director of the IRS stating that a tax lien related to the liability of only one spouse did not attach to entireties property. With such a letter in hand, banks approved loans and title companies issued clean policies.
2. As an aside, the decision to quitclaim to Ms. Kraft may have been a poor one when coupled with a contemplated bankruptcy petition. The bankruptcy trustee could have moved to set aside the transfer as constituting a fraudulent conveyance. Once set aside, the property might not revert to entireties but, rather, become property held in common, which could be sold by the trustee. **In re: Wickstrom**, 113 BR 339 (Bkrtcy WD Mich 1990). Further, under 11 USC 522 (g) (and **Wickstrom** on a waiver theory), the debtor's interest would not enjoy the benefit of the 11 USC 522 exemptions.
3. Proceeds of the sale of entireties property retains the entireties status. **Muskegon Lumber & Fuel, Co v Johnson**, 338 Mich 655 (1954). However, commingling can destroy that character.

SUMMARY OF THE PUBLIC ACTS OF 1994 RELATING TO REAL PROPERTY LAW

by *Gregory L. McClelland* and *Deborah A. Lee*

A number of Bills reported on during the last year eventually were enacted into law. What follows is a brief summary of these Bills.

1994 Public Act 3
[MCLA 207.525 - .529;
MSA 7.456 (25) - (29)]

This legislation amends the state real estate transfer tax act to provide additional exceptions from the tax and provide for a transfer tax rate of .75%.

1994 Public Act 9
[MCLA 211.30; MSA 7.30]

This legislation amends the general property tax act to revise the number of hours boards of review meet.

1994 Public Act 30
[MCLA 211.904; MSA ___]

This legislation provides amendments to the state educational tax act to require the filing of a homestead exemption affidavit before May 1, every two years, and provide for other general amendments.

1994 Public Act 78
[MCLA 318.301e; MSA 13.1053 (1e)]

This legislation amends the act permitting the state Conservation Commission to acquire land and undertake improvement programs at certain state parks to provide immunity from civil liability to department volunteers.

1994 Public Act 80
[MCLA 211.40; MSA 7.81]

This legislation amends the act concerned with the levy and collection of taxes to change the date real and personal property taxes become a lien to December 31 of the prior year. (See also, Public Act 279, below.)

1994 Public Act 111
[MCLA 205.54n; MSA 7.525 (14)]

This legislation provides amendments to the general sales tax act to exempt the sale of electricity, natural gas or home heating fuel for residential use from the 2% sales tax increase.

1994 Public Act 120
[MCLA 318.301 et. seq.; MSA 13.1053 (1) et. seq.]

This legislation amends the act concerned with state conservation and state park improvement programs to provide general amendments including renaming the act the Michigan state parks systems act.

1994 Public Act 121
[MCLA 318.301d; MSA 13.1053 (1d)]

This legislation amends the act concerned with conservation and the improvement of certain state parks to establish an "adopt-a-park" program that will allow volunteer groups to assist state park staff in maintaining and enhancing state parks.

1994 Public Act 125
[MCLA 339.2512, .2601; MSA 18.425 (2512), .425 (2601)]

This legislation exempts real estate brokers and associate brokers from licensure as real estate appraisers for conducting market analysis for a fee, under certain circumstances.

1994 Public Act 130
[MCLA 318.331 et. seq.; MSA 13.1020 (1) et. seq.]

This legislation creates the Michigan state parks foundation act whose purpose is to support the overall enhancement of the Michigan state park system.

1994 Public Act 136
[MCLA 380.1211; MSA 15.41211]

This legislation amends the school code of 1976 to exempt qualified agricultural property from the 18 mill levy for school operating purposes.

1994 Public Act 153
[MCLA 229.425, .426, .429, .429a, .430, .430a, .430b; MSA 13.29 (25), .29 (26), .29 (29), .29 (29a), .29 (30), .29 (30a), .29 (30b)]

This legislation amends the solid waste management act to revise and add various planning requirements.

1994 Public Act 172
[MCLA 388.1620; MSA 15.1919 (920)]

This legislation amends the state school aid act of 1979 to permit districts to differentiate mills levied for the operation of a community swimming pool from operating millage.

1994 Public Act 173
[MCLA 380.1211, .1512; MSA 15.41211, ___]

This legislation amends the school code of 1976 to permit districts to differentiate taxes levied in 1993 for the operation of a community swimming pool from operating millage and to permit school districts that operate a community swimming pool to levy a tax for the maintance and operation of the community pool with the approval of the school electors.

1994 Public Act 184
[MCLA 290.751 et. seq.; MSA 12.96 (1) et. seq.]

This legislation creates the Michigan ginseng act concerned with licensing and regulating the harvest, sale and distribution of American ginseng.

1994 Public Act 187
[MCLA 211.902, .903, .905; MSA 7.557 (32)]

This legislation amends the state education tax act to provide technical amendments including the requirement of state treasurer certification of the levy of tax under the act.

1994 Public Act 189
[MCLA 211.9b, .18, .24f, .87b, .89a; MSA 7.9 (2), .18, .24(6), .142 (1), ___]

This legislation amends the general property tax act to exempt "special tools" from taxation.

1994 Public Act 190
[MCLA 211.202 et. seq.; MSA 7.62 et. seq.]

This legislation amends the property tax limitation act to provide general and technical amendments consistent with Proposal A.

1994 Public Act 224
[MCLA 207.525; MSA 7.456 (25)]

This legislation amends the state real estate transfer tax act to impose a .75% tax on the total value of property being transferred beginning January 1, 1995.

1994 Public Act 230
[MCLA 125.2114, .2120, .2120a, .2121, .2121a, .2123; MSA 3.540 (314), .540 (320), .540 (320a), .540 (321), .540 (321a), .540 (323)]

This legislation amends the enterprise zone act to provide for indemnification of revenues lost as a result of the reduction of taxes levied for school operating purposes and provide for other technical amendments.

1994 Public Act 237
[MCLA 2.11.7cc, .7dd, 7ee, .24c, .43c, .53b; MSA ___, ___, ___, 7.24(3), ___, 7.97(2)]

This legislation amends the general property tax act to provide for and prescribe a procedure for claiming

a homestead exemption from property taxes levied by a local school district for school operating purposes.

1994 Public Tax Act 253
[MCLA 211.24e, .34e, .43, .47;
MSA 7.24 (5), ___ , 7.84, 7.91]

This legislation repeals "truth in taxation" provisions of the general property tax act for 1994 and provides for Proposal A implementation.

1994 Public Act 254
[MCLA 205.735, .737, .743, .762a, .766;
MSA 7.650 (35), .650 (37), .650 (43), ___ , ___]

This legislation provides amendments to the tax tribunal act to revise the interest rate on excess property taxes paid under protest to one percentage point above the adjusted prime rate per annum after March 31, 1994, and provides for other general amendments.

1994 Public Act 255
[MCLA 207.526, .528, .529;
MSA 7.456 (26), 7.456 (28), 7.456 (29)]

This legislation amends the state real estate transfer tax act to exempt from the tax certain properties transferred upon foreclosure.

1994 Public Act 257
[MCLA 339.103, .303, .805a;
MSA 18.425 (103), .425 (303), ___]

This legislation amends the occupational code to delete references to "commissions."

1994 Public Act 258
[MCLA 380.624a, .625a, .681, .681a, .682, .705, .1211, 1211c, .1211d, .1211e, .1282, .1451, .1724, .1724a, .1727a; MSA ___ , ___ , 15.4681, ___ , 15.4682, ___ , 15.41211, ___ , ___ , ___ , 15.41282, 15.41451, 15.41724, ___ , ___]

This legislation amends the school code of 1976 to prescribe limits on intermediate school district vocational-technical millage rates and provide for other amendments.

1994 Public Act 260
[MCLA 445.1675; MSA 23.1125 (75)]

This legislation amends the mortgage brokers, lenders, and servicers licensing act to include in its list of exempt entities non-profit corporations established pursuant to the neighborhood reinvestment corporation act.

1994 Public Act 261
[MCLA 493.79a; MSA 26.568 (29a)]

This legislation amends the act concerned with secondary mortgages and other unsecured loans to exempt from application non-profit corporations established pursuant to the neighborhood reinvestment corporation act.

1994 Public Act 263
[MCLA 286.752, .755, .756, .761, .762a, .762b;
MSA 12.160 (2), .160 (5), .160 (6), ___ , ___]

This legislation amends the fertilizer act of 1975 to provide for the protection of groundwater and to require compliance with the groundwater and freshwater protection act.

1994 Public Act 266
[MCLA 207.544, .559, .561, .564, .564a, .572;
MSA ___ , 7.800 (9), .800 (11), .800 (14),
___ , ___]

This legislation amends the act concerned with plant rehabilitation districts to implement Proposal A modifications.

1994 Public Act 279
[MCLA 211.40; MSA 7.81]

This legislation amends the general property tax act to adjust the date real property taxes become a lien to December 1 or tax day for taxes levied before 1995 and December 1 of the prior tax year for taxes levied after 1994.

1994 Public Act 280
[MCLA 125.1615, .1663 (B);
MSA 5.3010 (1), .3010 (13B)]

This legislation amends the downtown development authority act to provide for state reimbursement of lost school operating revenues.

1994 Public Act 281
[MCLA 125.1801 - .1812A;
MSA 3.540 (201) - (212A)]

This legislation amends the tax increment finance authority act to provide for state reimbursement of lost school operating revenues.

1994 Public Act 282
[MCLA 125.2152, .2161 (A);
MSA 3.540 (352), .540 (361A)]

This legislation amends the local development finance act to provide for state reimbursement of lost school operating revenues.

1994 Public Act 292
[MCLA 15.304; MSA 4.1700 (24)]

This legislation amends the act concerned with substantial conflicts of interest on the part of members of the legislature and state officers with respect to state contracts, to address the employment or membership of a legislator or state officer in a professional limited liability company that is a party to a state contract.

1994 Public Act 297
[MCLA 211.30c, .44b; MSA 7.303, ___]

This legislation amends the general property tax act to require assessors use as a basis the amount determined by the board of review for the following year's assessment and deem the postmark date as the date taxes are received.

1994 Public Act 306
[MCLA 247.183; MSA 9.263]

This legislation amends the act concerned with prohibiting obstructions and encroachments on public highways to permit certain utility lines to be constructed within limited access highway right of ways and otherwise require certain standards.

1994 Public Act 308
[MCLA 319.41 et. seq.; MSA 13.138 (101) et. seq.]

This legislation creates the orphan well fund to provide for response activity, site restoration or plugging of certain oil or gas wells.

1994 Public Act 311
[MCLA 125.2103, .2104, .2106 - .2114, .2114a, .2115 - .2117, .2119 - .2121, .2121a, .2122; MSA 3.540 (303), .540 (304), .540 (306) - (314), ___, .540 (315) - (317), .540 (319) - (321), ___, .540 (322)]

This legislation provides general amendments to the economic and industrial development act.

1994 Public Act 317
[MCLA 15.183; MSA 15.1120 (123)]

This legislation amends the act concerned, in part, with prohibiting the holding of incompatible public offices, to permit village and township officers or employees to serve as a member of various tax increment financing boards.

1994 Public Act 323
[MCLA 449.15, .18, .34, .36, .40, .44 - .48; MSA 20.15, .18, .34, .36, .40, ___]

This legislation amends the uniform partnership act to establish and regulate limited liability partnerships.

1994 Public Act 333
[MCLA 339.2501, .2512, .2512c; MSA 18.425 (2507), .425 (2512), .425 (2512c)]

This legislation amends the occupational code to regulate property management accounts and permit such accounts to be interest bearing.

1994 Public Act 344
[MCLA 380.1211c; MSA ___]

This legislation amends the act concerned with public education to place certain restrictions on the levying of enhancement millage.

1994 Public Act 354
[MCLA 38.311a; MSA ___]

This legislation amends the act concerned with establishing a state parks endowment fund to provide for the implementation of a constitutional amendment to create the Michigan state parks endowment fund within the state treasury.

1994 Public Act 362
[MCLA 320.307a; MSA 13.227 (1)]

This legislation amends the commercial forest act to address millage for school operating purposes.

1994 Public Act 363
[MCLA 125.1415a; MSA 16.114 (15a)]

This legislation amends the act concerned with tax exempt low income housing projects to provide that the owners of such projects pay an annual service charge for public services in lieu of taxes and provide for the calculation of the amount of such payments attributable to school operating millage for credit to the state school aid fund.

1994 Public Act 367
[MCLA 211.624; MSA 13.157 (4)]

This legislation amends the act concerning iron ore mineral rights and taxation to provide for Proposal A implementation.

1994 Public Act 368
[MCLA 207.662; MSA 7.800 (62)]

This legislation amends the act concerned with establishing commercial redevelopment districts to provide for Proposal A implementation.

1994 Public Act 369
[MCLA 207.779; MSA ___]

This legislation amends the neighborhood enterprise zone act to provide for Proposal A implementation.

1994 Public Act 376
[MCLA 125.581 - .592; MSA 5.2931 - .2942]

This legislation prohibits city zoning ordinances which prevent residents from giving instruction in a craft or fine art (i.e., music lessons).

1994 Public Act 377
[MCLA 125.271 - .301;
MSA 5.2963 (1) - .2963 (31)]

This legislation amends the township rural zoning act to prohibit zoning ordinances which prevent residents from giving instruction in a craft or fine art (i.e., music lessons).

1994 Public Act 378
[MCLA 125.201 - .232;
MSA 5.2961 (1) - .2961 (32)]

This legislation amends the county rural zoning enabling act to prohibit zoning ordinances which prevent residents from giving instruction in a craft or fine art (i.e., music lessons).

1994 Public Act 390
[MCLA 211.7u; MSA 7.7 (4r)]

This legislation amends the property tax act to establish guidelines for granting property tax poverty exemptions.

1994 Public Act 394
[MCLA 409.302, .303, .312a;
MSA 17.632, .633, ___]

This legislation amends the Michigan civilian conservation corps act to create a Michigan civilian conservation corps endowment fund within the state treasury and provide that the interest and earnings of the endowment fund be used for the operation of the corps.

1994 Public Act 397
[MCLA 600.3204, .3212, .3240;
MSA 27A.3204, .3212, .3240]

This legislation amends the revised judicature act of 1961 to modify the publication and other requirements concerned with a foreclosure by advertisement.

1994 Public Act 410
[MCLA 450.4701, .4702, .4703, .4705, .4706;
MSA ___]

This legislation amends the Michigan limited liability company act to expand the provisions concerning merger of limited liability companies.

1994 Public Act 415
[MCLA 211.7cc, .10, .10f, .24, .24b, .24c, .27, .27a, .30, .30c, .42a, .44; MSA ___ , 7.10, .10 (6), .24, .24 (2), .24 (3), .27, .27 (1), .30, ___ , .52 (4), ___ , .55, .80 (1), .83 (1), .87]

This legislation amends the act concerned with the levy and collection of property taxes to define "transfer of ownership" under the act and require certain property owners to file a property valuation affidavit with their local assessor.

1994 Public Act 425
[MCLA ___ ; MSA ___]

This legislation creates an act providing for the creation of a community swimming pool authority.

1994 Public Act 431
[MCLA 117.5i; MSA ___]

This legislation amends the act concerned with the incorporation of cities to permit cities with a population of more than one million to provide, by ordinance, for special assessments to pay for snow removal, mosquito abatement and security services.

LEGISLATIVE STATUS REPORT
ACTION ON LEGISLATION OVER THE LAST THREE MONTHS

by *Gregory L. McClelland* and *Deborah A. Lee*

HB 4002 — Creates an act regulating prescribed burning on certain state land and requiring the Department of Natural Resources to provide notification and a public hearing prior to a burn — introduced by Rep. Anthony on 1/11/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/7/95, reported with recommendation with substitute, referred to second reading 2/9/95, substitute amended and adopted, placed on third reading; 2/14/95, passed, given immediate effect; 2/16/95, referred to Committee on Natural Resources and Environmental Affairs.

HB 4003 — Amends the Michigan penal code to prohibit tree spiking and provide criminal penalties for tree spiking — introduced by Rep. Anthony on 1/11/95 and referred to Committee on Agriculture and Forestry.

HB 4004 — Amends the state aid to public libraries act to provide for a cooperative library board that may sue or be sued, enter into land contracts and execute purchase money mortgages to acquire sites — introduced by Rep. Anthony on 1/11/95 and referred to Committee on Local Government.

HB 4008 — Amends the act concerned with environmental protection to provide criminal penalties and civil remedies for littering, including the seizure and impoundment of a vehicle operated in the commission of a violation of the act — introduced by Rep. Anthony on 1/11/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4011 — Amends the Michigan occupational safety and health act to provide regulations for the training of lead abatement contractors and safety procedures for engaging in certain lead abatement projects — introduced by Rep. Clack on 1/11/95 and referred to Committee on Regulatory Affairs.

HB 4014 — Creates an act concerned with prohibiting discrimination in government financed programs and activities relating to occupational and community exposure to certain hazardous substances — introduced by Rep. Clack on 1/11/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4030 — Amends the administrative procedures act of 1969 to coordinate it with other acts concerned with suspending licenses on the basis of child support arrearage (see also HB 4072) — introduced by Rep. Baade on 1/11/95 and referred to Committee on Judiciary and Civil Rights.

HB 4031 — Amends the act concerned with the procedural aspect of the levy and appeal of taxes and tax liability to require the department to issue a certificate of withdrawal stating that a recorded lien has been filed in error when such a lien and levy was placed on a taxpayer's assets in error — introduced by Rep. Agee on 1/11/95 and referred to Committee on Tax Policy.

HB 4034 — Amends the adult foster care facility licensing act to require the Department of Social Services to promulgate rules to prevent segregating housing patterns — introduced by Rep. Profit on 1/11/95 and referred to Committee on Human Services.

HB 4051 — Amends the act concerned with the designation of natural beauty roads to require boards to notify township clerks of proposed projects along natural beauty roads and permit townships to hold public hearings on proposed activity, if desired — introduced by Rep. Crissman on 1/11/95 and referred to Committee on Transportation.

HB 4053 — Amends the act concerned with the protection and conservation of natural resources to

provide a procedure for establishing public lake access for the launching of boats in inland lakes — introduced by Rep. Crissman on 1/11/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4059 — Amends the general property tax act to require property tax collectors to include in tax bills a statement notifying taxpayers of the right to appeal to the board of review a claimed homestead or qualified agricultural exemption that does not appear on a tax statement — introduced by Rep. Dalman on 1/11/95 and referred to Committee on Tax Policy.

HB 4072 — Amends the support and visitation enforcement act to provide for the suspension of occupational or driver licenses for noncompliance with support or visitation orders and provide procedures for enforcement of the act (see also HB 4030) — introduced by Rep. Gire on 1/11/95 and referred to Committee on Judiciary and Civil Rights.

HB 4077 — Amends the general property tax act to allow July and December tax boards of review to meet for consideration of hardship cases — introduced by Rep. Bullard, Jr. on 1/11/95 and referred to Committee on Tax Policy; 2/23/95, reported with recommendation with substitute, referred to second reading.

HB 4079 — Amends the subdivision control act of 1967 to provide certain public access and shore line activity rights to the public when a plat includes streets dedicated for public use that end at public waters — introduced by Rep. Hammerstrom on 1/11/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4093 — Amends the general property tax act to permit the boards of local school districts to, by resolution, create a property tax appreciation program that allows senior citizens to volunteer their time to the school districts in return for forgiveness by the school districts of a portion of the taxes levied on their homestead — introduced by Rep. Bryant, Jr. on 1/17/95 and referred to Committee on Tax Policy.

HB 4106 — Amends the recreational trespass act to include within its protection residential property and provide that residential property need not be fenced or posted to prevent hunting or fishing on the property without permission — introduced by Rep. Porreca on 1/17/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4118 — Amends the act concerned with city and village zoning to require all city and village zoning ordinances authorize family day care homes and group day care homes in all residential zones subject to certain conditions and limitations determined by the city or village — introduced by Rep. Dolan on 1/17/95 and referred to Committee on Local Government.

HB 4120 — Amends the hazardous waste management act to require applicants for a hazardous waste management construction permit for use of a salt dome, salt bed formation, mine or cave to obtain storage and passage rights from surface owners for the entire formation before submitting the construction permit application — introduced by Rep. Varga on 1/17/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4121 — Amends the general property tax act to exclude from tax sales homestead property of certain low income senior citizens and permit those senior citizens to remain in their home — introduced by Rep. Varga on 1/17/95 and referred to Committee on Tax Policy.

HB 4140 — Amends the insurance code of 1956 to require title insurance rates be negotiable — introduced by Rep. McBryde on 1/17/95 and referred to Committee on Insurance.

HB 4144 — Amends the hazardous waste management act to provide for a pollution prevention program and provide procedures for operating the program — introduced by Rep. Freeman on 1/17/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4159 — Amends the act concerned with police and fire protection for townships and certain villages to permit those who charge a fee for emergency fire services to collect delinquent fees in the same manner as property taxes (i.e., such fees may become a lien on the property and the fees collected and the lien enforced in the same manner as provided for the collection of taxes assessed upon the tax roll) — introduced by Rep. Hill on 1/17/95 and referred to Committee on Local Government.

HB 4160 — Amends the general property tax act to deem certain wetland and undevelopable or unusable property to be of $0 true cash value and require the Department of Natural Resources reimburse local taxing units for revenue lost because of the reduction in true cash value of property located in that local

taxing unit — introduced by Rep. Rhead on 1/17/95 and referred to Committee on Tax Policy.

HB 4169 — Amends the subdivision control act of 1967 to provide general amendments — introduced by Rep. Middleton on 1/17/95 and referred to Committee on Local Government.

HB 4170 — Creates the regional impact coordination act which prohibits certain developments unless unreasonable impacts on services and facilities arising from the developments are eliminated, prescribes powers and duties of certain governmental entities and officials with respect to the act, among other things — introduced by Rep. Middleton on 1/17/95 and referred to Committee on Local Government.

HB 4171 — Amends the county rural zoning enabling act to authorize counties to provide for land management plans, provide for districts classified on the availability of services and facilities, to authorize the transfer or purchase of development rights, establish authorities to purchase and hold development rights, grant the power of eminent domain and provide for the availability of services and facilities in conjunction with building construction or use and occupancy — introduced by Rep. Bobier on 1/17/95 and referred to Committee on Local Government.

HB 4172 — Amends the township rural zoning enabling act to authorize counties to provide for land management plans, provide for districts classified on the availability of services and facilities, to authorize the transfer or purchase of development rights, establish authorities to purchase and hold development rights, grant the power of eminent domain and provide for the availability of services and facilities in conjunction with building construction or use and occupancy — introduced by Rep. Bobier on 1/17/95 and referred to Committee on Local Government.

HB 4173 — Creates the development agreement act to authorize local units of government and developers to enter into development agreements, prescribe the powers and duties of developers and certain governmental entities and officials under the act as well as provide remedies — introduced by Rep. Middleton on 1/17/95 and referred to Committee on Local Government.

HB 4174 — Creates an act to provide a standard for determining when property is specially benefited by an improvement financed by special assessments — introduced by Rep. Bobier on 1/17/95 and referred to Committee on Local Government.

HB 4175 — Creates an act which allows a public agency to adopt an official map of all or a portion of the area within its jurisdiction showing all of the public facilities or all of a certain type of public facility of the public agency, and to regulate or prohibit construction within the boundaries of existing or proposed public facilities — introduced by Rep. Bobier on 1/17/95 and referred to Committee on Local Government.

HB 4176 — Amends the act concerned with cities and villages establishing districts or zones to authorize counties to provide for land management plans, provide for districts classified on the availability of services and facilities, to authorize the transfer or purchase of development rights, establish authorities to purchase and hold development rights, grant the power of eminent domain and provide for the availability of services and facilities in conjunction with building construction or use and occupancy — introduced by Rep. Middleton on 1/17/95 and referred to Committee on Local Government.

HB 4186 — Amends the act concerned with licensure and registration of child care organizations to require any applicant for such a license to include in the application the results of a recently conducted test for the presence of radon on the premises where the children are to be cared for — introduced by Rep. Schroer on 1/30/95 and referred to Committee on Health Policy.

HB 4187 — Amends the act concerned with the regulation of the disposal of certain batteries to prohibit the sale or distribution of certain batteries in this state and prohibit the disposal of certain batteries in a municipal solid waste incinerator or a solid waste landfill — introduced by Rep. Schroer on 1/30/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4189 — Amends the pesticide control act to require the department to issue a health-risk assessment and cost-benefit analysis advisory regarding the health risks, benefits and risks associated with the application of certain pesticides in urban and residential areas and supply such advisories to consumers upon request — introduced by Rep. Schroer on 1/30/95 and referred to Committee on Agriculture and Forestry.

HB 4201 — Amends the mineral well act to require applicants for a permit to drill or convert a well

into a hazardous waste disposal to provide in the application a disclosure statement of certain background-check type information — introduced by Rep. Pitoniak on 1/30/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4207 — Amends the mineral well act to prohibit a supervisor from issuing a permit to drill or convert a well into a hazardous waste disposal well if the well will receive more than one type of hazardous waste from more than one source — introduced by Rep. Pitoniak on 1/30/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4208 — Amends the act concerned with the classification and funding of public roads to permit the state transportation commission to borrow money and issue notes or bonds for the repair, resurfacing and maintenance of existing roads and bridges — introduced by Rep. Pitoniak on 1/30/95 and referred to Committee on Transportation.

HB 4211 (Same as SB 207) — Amends the dam safety act to exempt certain dams in need of repair or improvement from the permit requirements of the act — introduced by Rep. Llewellyn on 1/30/95 and referred to Committee on Conservation and Great Lakes. (SB 207 introduced by Sen. Schuette on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs).

HB 4217 — Amends the revised judiciary act of 1961 to require county registers of deeds to collect an additional fee of $25.00 for the recording of any contract of the sale of land and dedicate a portion of the revenue generated to the Michigan affordable housing fund — introduced by Rep. Leland on 1/30/95 and referred to Committee on Local Government.

HB 4218 — Amends the act concerned with the recording of contracts for the sale of land to require the recording of land contracts within 30 days of execution and acknowledgment, and provide for invalidation of the contract if it is not recorded as required by this amendment — introduced by Rep. Leland on 1/30/95 and referred to Committee on Local Government.

HB 4219 — Creates the recycled cities act which is concerned with commercial redevelopment, the reuse of certain real property to reduce urban sprawl and aid in the revitalization of property with existing infrastructure — introduced by Rep. Profit on 1/30/95 and referred to Committee on Urban Policy.

HB 4225 — Amends the general property tax act to permit local tax collecting units to be reimbursed from the state school aid fund for all expenses incurred in administering homestead exemption affidavits — introduced by Rep. Whyman on 1/30/95 and referred to Committee on Appropriations.

HB 4237 — Amends the general property tax act to require property assessment notices to include a statement advising the taxpayer that an assessor may not consider for the purposes of determining property assessments, the increase in taxable value of property that is the result of expenditures for normal repairs, replacement and maintenance until the property is sold, and permit taxpayers to obtain from the assessor's office, at no charge, a list of repairs that are considered normal maintenance — introduced by Rep. Willard on 1/31/95 and referred to Committee on Tax Policy.

HB 4238 — Amends the general property tax act to require property tax statements to include a notice advising taxpayers of the availability of various property tax credits — introduced by Rep. Willard on 1/31/95 and referred to Committee on Tax Policy.

HB 4249 — Amends the environmental response act to redefine "hazardous substance" — introduced by Rep. Alley on 2/1/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/14/95, reported with recommendation with substitute, referred to second reading; 2/22/95, substitute adopted, placed on third reading; 2/23/95, passed, given immediate effect; 2/28/95, referred to Committee on Natural Resources and Environmental Affairs.

HB 4250 — Amends the act concerned with the protection and conservation of natural resources to create the commission of natural resources to serve as the head of the Department of Natural Resources and otherwise reorganize the Department of Natural Resources — introduced by Rep. Alley on 2/1/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4254 — Amends the income tax act of 1967 to provide certain property tax credit maximum amounts and, beginning in 1996, base the maximum credit allowed upon the Detroit consumer price index — introduced by Rep. Dobronski on 2/1/95 and referred to Committee on Tax Policy.

HB 4255 — Amends the general property tax act to exempt certain senior citizens from taxes assessed for school operating purposes and provide for state reimbursement of tax revenues lost as a result of the exemption — introduced by Rep. Dobronski on 2/1/95 and referred to Committee on Tax Policy.

HB 4257 — Amends the home rule city act to increase the maximum penalties permitted for violation of city ordinances — introduced by Rep. Dobronski on 2/1/95 and referred to Committee on Judiciary and Civil Rights.

HB 4261 — Amends the income tax act of 1967 as it pertains to homestead credits, to reduce the income cap and eliminate the income cap for certain individuals — introduced by Rep. Bodem on 2/1/95 and referred to Committee on Tax policy.

HB 4266 — Amends the executive organization act of 1965 to provide for the creation of the Department of Fish and Wildlife — introduced by Rep. Llewellyn on 2/1/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4268 — Amends the solid waste management act to provide, in certain instances, a 5 year planning period for solid waste management plans — introduced by Rep. Nye on 2/5/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4290 — Amends the state real estate transfer tax act to redefine "property", add the definition of "real property", modify the exemptions to the act and require registers of deeds to provide assessing officers with copies of recorded written instruments subject to the tax — introduced by Rep. Kukuk on 2/2/95 and referred to Committee on Tax Policy.

HB 4291 — Amends the act which imposes a tax upon written instruments which transfer any interest in real property to provide additional exemptions to the act similar to those proposed in house bill 4290 — introduced by Rep. Kukuk on 2/2/95 and referred to Committee on Tax Policy.

HB 4294 — Amends the general property tax act to exempt wetland property from taxation under the act — introduced by Rep. Gnodtke on 2/2/95 and referred to Committee on Tax Policy.

HB 4295 — Amends the sand dune protection and management act to include within its prohibition of zoning ordinances permitting certain uses of critical dune areas unless a variance is granted, the use of a slope that is greater than 25% unless the structure is in accordance with plans prepared for the site by a professional engineer — introduced by Rep. Gnodtke on 2/2/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4299 — Amends the land sales act to require property reports of subdivided lands to include a statement that the property may be located in the vicinity of a farm but the seller of the property is not required to disclose whether a farm is actually located in the vicinity of the property — introduced by Rep. Gnodtke on 2/2/95 and referred to Committee on Agriculture and Forestry; 2/16/95, reported with recommendation, referred to second reading.

HB 4300 — Amends the Michigan right to farm act to provide that a farm or farm operation that is in conformance with the act shall not be found to be a public or private nuisance as a result of certain acts, in addition to other revisions — introduced by Rep. Gnodtke on 2/2/95 and referred to Committee on Agriculture and Forestry; 2/16/95, reported with recommendation with substitute, referred to second reading.

HB 4301 — Amends the sellers disclosure act to provide general amendments — introduced by Rep. Gnodtke on 2/2/95 and referred to Committee on Agriculture and Forestry; 2/16/95, reported with recommendation with substitute, referred to second reading.

HB 4310 — Amends the general property tax act to require notices of unpaid or delinquent taxes be sent by certified mail — introduced by Rep. Jaye on 2/7/95 and referred to Committee on Tax Policy.

HB 4312 — Amends the act providing for the assessment and levy of tax liens to provide a mechanism for the filing of a notice stating that a lien was placed in error, or issue a release of levy issued and served in error — introduced by Rep. Bush on 2/7/95 and referred to Committee on Tax Policy; 2/23/95, reported with recommendation, referred to second reading.

HB 4325 — Amends the farm land and open space preservation act to provide for the division of land described in a development rights agreement, provide for the renewal of development rights agreements and for the repayment and reduction of liens, among other things — introduced by Rep.

McManus on 2/7/95 and referred to Committee on Agriculture and Forestry.

HB 4326 — Creates the home inspection services act concerned with defining and prescribing certain disclosures and standards for contracts involving home inspection services and provide for rights and remedies for noncompliance or violation of the act — introduced by Rep. DeLange on 2/7/95 and referred to Committee on Regulatory Affairs.

HB 4337 — Amends the general property tax act to require assessors to exempt property from the collection of the tax levied for local school district operating purposes, on a prorata, calendar basis for the year in which a homestead affidavit is filed — introduced by Rep. Gyre on 2/7/95 and referred to Committee on Tax Policy.

HB 4343 — Amends the act concerned with the providing of police and fire protection for townships and certain villages to permit municipalities to enter on the tax roll and become a lien against real property, delinquent fees for emergency services. However, property is not subject to sale for nonpayment of the emergency service charge unless the property is also subject to sale for delinquent property taxes — introduced by Rep. Rhead on 2/8/95 and referred to Committee on Tax Policy.

HB 4348 — Amends the natural resources and environmental protection act to provide general amendments and revisions to certain management of resource statutes — introduced by Rep. Middaugh on 2/8/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/28/95, reported with recommendation with amendment(s), referred to second reading.

HB 4349 — Amends the natural resources and environmental protection act to provide general amendments and revisions to certain recreation statutes — introduced by Rep. Alley on 2/8/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/28/95, reported with recommendation with amendment(s), referred to second reading.

HB 4350 — Amends the natural resources and environmental protection act to provide general amendments and revisions to certain habitat protection statutes — introduced by Rep. Hill on 2/8/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/28/95, reported with recommendation, referred to second reading.

HB 4351 — Amends the natural resources and environmental protection act to provide general amendments and revisions to certain environmental statutes — introduced by Rep. Murphy on 2/8/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/28/95, reported with recommendation, referred to second reading.

HB 4385 — Amends the natural resources and environmental protection act to provide certain technical amendments — introduced by Rep. Middaugh on 2/14/95 and referred to Committee on Conservation, Environment and Great Lakes; 2/28/95, reported with recommendation with amendment(s), referred to second reading.

HB 4386 — Amends the act concerned with the establishment of plant rehabilitation and industrial development districts to prohibit approval of an application, and issuance of an industrial facilities certificate, if the governing body of a local tax assessing unit exempts personal property from taxation under the general property tax act — introduced by Rep. Bullard, Jr. on 2/14/95 and referred to Committee on Tax Policy.

HB 4400 — Amends the social welfare act to provide that in cases of rent vendoring arrangements, if a judgment is entered against a recipient of ADC or state family assistance for damages arising from the recipient's destruction of the rented premises, that the Department deduct 10% of each monthly grant to the recipient and convey that amount to the landlord — introduced by Rep. Horton on 2/14/95 and referred to Committee on Human Services.

HB 4402 — Amends the aeronautics code of the state of Michigan to require the Department of Natural Resources to complete an environmental impact statement analyzing the impact construction of a new airport facility or the expansion of an existing facility would have on various environmental factors before federal funds can be accepted and state funds advanced for construction — introduced by Rep. Bryant, Jr. on 2/14/95 and referred to Committee on Transportation.

HB 4407 — Amends the general property tax act to exempt from the definition of personal property, personal property used to provide a water softening system for a residential dwelling — introduced by Rep. Geiger on 2/15/95 and referred to Committee on Tax Policy.

HB 4409 — Amends the act concerned with the administration of the Department of Treasury to require certain bulletins and letter rulings issued by the revenue commissioner apply prospectively and not retroactively — introduced by Rep. Kukuk on 2/15/95 and referred to Committee on Tax Policy.

HB 4433 — Creates the property rights preservation act which provides a process for evaluating, and creates causes of action for, governmental actions that may result in constitutional takings of private property — introduced by Rep. Sikkema on 2/16/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4434 — Amends the general property tax act to provide that if a state agency undertakes a governmental action that is a constitutional taking of private property, any real property affected by that action be assessed in an amount that reflects the limitation on the use of that property — introduced by Rep. Sikkema on 2/16/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4437 — Amends the fire prevention code to require a fire suppression system be installed in new construction or renovation of any public lodging building — introduced by Rep. Curtis on 2/21/95 and referred to Committee on Regulatory Affairs.

HB 4438 — Amends the general property tax act to provide that beginning December 31, 1994, assessors shall not consider new construction of a residential dwelling on real property in determining the taxable value of the property until the residential dwelling is occupied — introduced by Rep. Griffin on 2/21/95 and referred to Committee on Tax Policy.

HB 4450 — Amends the home rule village act to permit villages to issue special assessment bonds for certain local improvements in certain circumstances without having to submit the issue to approval by election — introduced by Rep. Hammerstrom on 2/21/95 and referred to Committee on Local Government.

HB 4451 — Amends the charter township act to exempt bonds, assessments and contract obligations for the improvement or replacement of a combined sewer overflow abatement facility from a township's debt limit — introduced by Rep. Hammerstrom on 2/21/95 and referred to Committee on Local Government.

HB 4461 — Amends the solid waste management act to exempt those landfills that have submitted a request for approval to operate a methane gas recovery facility from the ban on yard waste disposal — introduced by Rep. Palamara on 2/23/95 and referred to Committee on Conservation, Environment and Great Lakes.

HB 4467 — Amends the act concerned with city and village zoning ordinances to limit the number of adult or child group homes in a city or village when state facilities also exist in the community — introduced by Rep. Law on 2/23/95 and referred to Committee on Local Government.

HB 4468 — Amends the county rural zoning enabling act to limit the number of adult or child group homes in a county when state facilities exist in the community — introduced by Rep. Law on 2/23/95 and referred to Committee on Local Government.

HB 4469 — Amends the township rural zoning act to limit the number of adult or child group homes in a township when a state facility exists in the community — introduced by Rep. Law on 2/23/95 and referred to Committee on Local Government.

HB 4473 — Amends the general property tax act to permit the state assessors board to revoke the certification of an assessor for a period of not less than one year if that assessor knowingly withholds information concerning the assessment of any parcel of real property within the assessing unit — introduced by Rep. Rhead on 2/28/95 and referred to Committee on Tax Policy.

HB 4479 — Amends the general property tax act to provide that in determining the value of unimproved real property, the assessor shall not consider, until the property is sold, an increase in true cash value resulting from improvements that are deeded to the local unit of government in which the property is located — introduced by Rep. Voorees on 2/28/95 and referred to Committee on Tax Policy.

HB 4485 — Amends the income tax act of 1967 to increase the maximum property tax credit for tax years after 1994 to $1500 per year — introduced by Rep. Whyman on 2/28/95 and referred to Committee on Tax Policy.

HB 4491 — Amends the general property tax act to provide for local collection and distribution of the state education tax — introduced by Rep. Law on 2/28/95 and referred to Committee on Tax Policy.

HB 4492 — Amends the state education tax act to delete the provision requiring the state treasurer, upon receipt of the state education tax, to deposit the tax into the state treasury to the credit of the state school aid fund (to bring it into accord with House Bill 4491) — introduced by Rep. Law on 2/28/95 and referred to Committee on Tax Policy.

HB 4927 — Provides that clauses in construction contracts waiving the right of a contractor, subcontractor or supplier to recover damages resulting from the delay of scheduled contract performance shall, in some instances, be unenforceable as a matter of public policy — introduced by Rep. Palamara on 7/8/93 and referred to Committee on Business & Finance; 6/8/94, reported with recommendation with substitute, referred to second reading; 6/21/94, substitute adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 6/22/94, referred to Committee on Corporations and Economic Development; 12/6/94, reported favorably with substitute; 12/8/94, referred to Committee on Corporations and Economic Development.

HB 4945 — Amends the act providing for the levy and collection of taxes to implement proposal A legislation concerning a cap on the annual increase in taxable value of real property and impose an obligation on certain property owners to file a property valuation affidavit with their local assessor — introduced by Rep. Bobier on 11/10/94 and referred to Committee on Taxation; 11/20/94, reported with recommendation with substitute, referred to second reading; 12/06/94, substitute amended and adopted, amended, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/7/94, referred to Committee on Finance; 12/13/94, reported favorably with amendment(s), referred to general orders, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s), placed on immediate passage, amended, passed, given immediate effect, amended; 12/14/94, amended, senate amendment(s) concurred in as amended, given immediate effect in House, House amendment(s) to Senate amendment(s) concurred in, bill ordered enrolled — 12/29/94, approved by the Governor, filed with the Secretary of State; assigned PA 415 with immediate effect.

HB 4971 — Eliminates the requirement of certified storm water operators at construction sites — introduced by Rep. Middaugh on 7/23/93 and referred to Committee on Conservation, Environment & Great Lakes; 9/21/93, second reading; 11/29/94, placed on third reading; 12/6/94, passed, given immediate effect; 12/7/94, referred to Committee on Natural Resources and Environmental Affairs.

HB 5019 — Amends the property tax act to establish guidelines for granting property tax poverty exemptions — introduced by Rep. Bullard on 8/31/93 and referred to Committee on Taxation; 3/10/94, reported with recommendation with substitute; 3/22/94, substitute adopted, placed on third reading; 3/23/94, amended, passed, given immediate effect; 3/24/94, referred to Senate Committee on Finance; 12/13/94, reported favorably with amendment(s), referred to general orders, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s), placed on immediate passage, passed, given immediate effect, senate amendment(s) concurred in, given immediate effect in House, bill ordered enrolled; 12/29/94, presented to the Governor, approved by the Governor, filed with the Secretary of State, assigned PA 390 of the 1994 with immediate effect.

HB 5528 — Amends the act concerned with establishing a state parks endowment fund to provide for the implementation of a constitutional amendment to create the Michigan state parks endowment fund within the state treasury — introduced by Rep. Alley on 5/4/94 and referred to Committee on Appropriations; 5/24/94, reported with recommendation, referred to second reading; 5/25/94, placed on third reading, placed on immediate passage, passed, given immediate effect; 5/31/94, referred to Committee on Natural Resources & Environmental Affairs; 12/6/94, reported favorably without amendment, referred to general orders, reported by Committee of the Whole favorably without amendment, placed on order of third reading; 12/7/94, passed given immediate effect, bill ordered enrolled; 12/12/94, presented to the Governor, approved by the Governor, filed with the Secretary of State, assigned PA 354 of 1994 with immediate effect.

HB 5632 — Amends the Michigan civilian conservation corps act to create a Michigan civilian conservation corps endowment fund within the state treasury and provide that the interest and earnings of the endowment fund shall be used for the

operation of the corps — introduced by Rep. Mathieu on 6/9/94 and referred to Committee on Conservation & Great Lakes; 6/14/94, reported with recommendation, referred to second reading; 6/21/94, placed on third reading, placed on immediate passage, passed, given immediate effect; 6/22/94, referred to Committee on Natural Resources & Environmental Affairs; 12/6/94, reported favorably without amendment; 12/8/94, placed on immediate passage, passed, given immediate effect, bill ordered enrolled; 12/29/94, presented to the Governor, approved by the Governor, filed with the Secretary of State, assigned PA 394 of 1994 with immediate effect.

HB 5680 — Amends the commercial forest act to address millage for school operating purposes — introduced by Rep. Gustafson on 6/22/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation with substitute, referred to second reading; 11/30/94, substitute amended and adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to Committee on Finance; 12/7/94, motion to discharge committee, motion to discharge committee approved, referred to general orders, placed on immediate passage, placed on order of third reading; 12/8/94, passed, given immediate effect, bill ordered enrolled; 12/13/94, presented to the Governor; 12/26/94, approved by the Governor; 12/27/94, filed with the Secretary of State, assigned PA 362 with immediate effect.

HB 5719 — Amends the Michigan limited liability company act to expand the provisions concerning merger of limited liability companies — introduced by Rep. Randall on 9/13/94 and referred to Committee on Business and Finance; 9/14/94, reported with recommendation, referred to second reading; 9/21/94, placed on third reading, placed on immediate passage, passed, given immediate effect; 11/10/94, referred to Committee on Corporations and Economic Development; 12/6/94, reported favorably without amendment; 12/7/94, reported by Committee of the Whole favorably without amendment, placed on order of third reading; 12/8/94, passed, given immediate effect, bill ordered enroled; 12/29/94, presented to the Governor, approved by the Governor, filed with the Secretary of State, assigned PA 410 of 1994 with immediate effect.

HB 5721 — Amends the revised judicature act of 1961 to modify the publication and other requirements concerned with a foreclosure by advertisement — introduced by Rep. Randall on 9/13/94 and referred to Committee on Business and Finance; 9/14/94, reported with recommendation with substitute, referred to second reading; 9/21/94, substitute adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 11/10/94, referred to Committee on Corporations and Economic Development; 12/6/94, reported favorably with amendment(s); 12/7/94, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s); 12/8/94, amended, passed, given immediate effect; 12/12/94, Senate amendment(s) concurred in, given immediate effect in House, bill ordered enrolled; 12/29/94, presented to the Governor, approved by the Governor, filed with the Secretary of State, assigned PA 397 of 1994 with immediate effect.

HB 5846 — Amends the act concerned with tax exempt low income housing projects to provide that the owners of such projects pay an annual service charge for public services in lieu of taxes and provide for the calculation of the amount of such payments attributable to school operating millage for credit to the state school aid fund — introduced by Rep. Gubow on 11/10/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation with substitute, referred to second reading; 11/30/94, substitute amended and adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to Committee on Finance; 12/7/94, motion to discharge committee, motion to discharge committee approved, referred to general orders, placed on immediate passage, placed on order of third reading; 12/8/94, passed, given immediate effect, bill ordered enrolled; 12/13/94, presented to the Governor; 12/26/94, approved by the Governor, filed with the Secretary of State, assigned PA 363 of 1994 with immediate effect.

HB 5940 — Amends the act concerning iron ore mineral rights and taxation to provide for proposal A implementation — introduced by Rep. Profit on 11/10/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation with substitute, referred to second reading; 11/30/94, substitute amended and adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to Committee on

Finance; 12/7/94, motion to discharge committee, motion to discharge committee approved, referred to general orders, placed on immediate passage, placed on order of third reading; 12/8/94, passed, given immediate effect, bill ordered enrolled; 12/26/94, presented to the Governor, approved by the Governor; 12/27/94, filed with the Secretary of State, assigned PA 367 of 1994 with immediate effect.

HB 5942 — Amends the act concerned with establishing commercial redevelopment districts to provide for proposal A implementation — introduced by Rep. Brackenridge on 11/10/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation with substitute, referred to second reading; 11/30/94, substitute amended and adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to Committee on Finance; 12/7/94, motion to discharge committee, motion to discharge committee approved, referred to general orders, placed on immediate passage, placed on order of third reading; 12/8/94, passed, given immediate effect, bill ordered enrolled; 12/13/94, presented to the Governor; 12/26/94, approved by the Governor; 12/27/94, filed with the Secretary of State, assigned PA 368 of 1994 with immediate effect.

HB 5943 — Amends the neighborhood enterprise zone act to provide for proposal A implementation — introduced by Rep. Brackenridge on 11/10/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation and substitute, referred to second reading; 11/30/94, substitute amended and adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to Committee on Finance; 12/7/94, motion to discharge committee, motion to discharge committee approved, referred to general orders, placed on immediate passage, placed on order of third reading; 12/8/94, amended, passed, given immediate effect; 12/13/94, Senate amendment(s) concurred in, given immediate effect in House, bill ordered enrolled, Senate requests return, enrollment vacated, requests granted, vote reconsidered, placed on order of third reading, vote reconsidered, amended, passed, Senate amendment(s) concurred in, given immediate effect in House, bill ordered enrolled; 12/26/94, presented to the Governor, approved by the Governor; 12/27/94, filed with the Secretary of State, assigned PA 369 of 1994 with immediate effect.

HB 5945 — Amends the act concerned with the levy and collection of property taxes to define "transfer of ownership" under the act and require certain property owners file a property valuation affidavit with their local assessor — introduced by Rep. Bobier on 11/10/94 and referred to Committee on Taxation; 11/30/94, reported with recommendation with substitute, referred to second reading; 12/6/94, substitute amended and adopted, amended, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/7/94, referred to Committee on Finance; 12/13/94, reported favorably with amendment(s), referred to general orders, reported by Committee of the Whole favorably, amendment(s) concurred in, placed on order of third reading with amendment(s), placed on immediate passage, amended, passed, given immediate effect, amended; 12/14/94, amended, Senate amendment(s) concurred in as amended, given immediate effect in House, House amendment(s) to Senate amendment(s) concurred in, bill ordered enrolled; 12/29/94, approved by the Governor, filed with Secretary of State, assigned PA 415 with immediate effect.

HB 5946 — Amends the act concerned with public education to place certain restrictions on the levying of enhancement millage — introduced by Rep. Fitzgerald on 11/10/94 and referred to Committee on Taxation; 11/29/94, reported with recommendation with substitute, referred to second reading; 11/30/94, substitute adopted, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/1/94, referred to general orders; 12/6/94, amended, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s); 12/7/94, amended, passed, given immediate effect; 12/8/94, Senate amendment(s) concurred in, given immediate effect in House, bill ordered enrolled; 12/12/94, presented to the Governor, approved by the Governor, filed with Secretary of State, assigned PA 344 of 1994 with immediate effect.

HB 5956 — Creates an act providing for the creation of a community swimming pool authority — introduced by Rep. Dalman on 11/29/94 and referred to Committee on Education; 12/6/94, reported with recommendation with amendment(s), referred to second reading, amended, placed on third reading, placed on immediate passage, passed, given immediate effect; 12/7/94, referred to Committee on Finance; 12/13/94, motion to discharge committee, motion to discharge

committee approved, referred to general orders, placed on immediate passage, placed on order of third reading, amended, passed, given immediate effect; 12/14/94, Senate amendment(s) concurred in as amended, given immediate effect in House, House amendment(s) to Senate amendment(s) concurred in, bill ordered enrolled.

HB 5995 — Amends the act concerned with the payment and collection of property tax to eliminate the winter levy and make taxes due and payable on July 1 — introduced by Rep. Bullard Jr. on 12/13/94 and referred to Committee on Taxation.

HB 5997 — Amends the act concerned with gaming and gambling to permit riverboat casino gambling — introduced by Rep. Murphy on 12/14/94 and referred to Committee on Tourism and Recreation.

SB 12 — Amends the solid waste management act to provide regulations for the importing of solid waste from other states and the country of Canada for disposal in this state — introduced by Sen. DeBeaussaert on 1/17/94 and referred to Committee on Natural Resources and Environmental Affairs.

SB 17 — Amends the tax tribunal act to provide that in the event the tax tribunal determines that an assessment, after equalization is greater than the assessment appealed from, the tribunal will not order an increase in the amount of the assessment under appeal — introduced by Sen. Bouchard on 1/17/94 and referred to Committee on Finance.

SB 39 — Amends the state real estate transfer tax act to reduce the rate of tax imposed under the act from $3.75 to .55 cents for each $500 or fraction of $500 of the total value of the property being transferred — introduced by Sen. Bouchard on 1/17/94 and referred to Committee on Finance.

SB 42 — Amends the solid waste management act to include within the definition of "solid waste", medical waste as defined in the public health code — introduced by Sen. Smith, Jr. on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 49 — Amends the single business tax act to provide an increased filing threshold for certain manufacturers of steel framed residential buildings — introduced by Sen. Dingell on 1/17/94 and referred to Committee on Finance.

SB 52 — Creates an act concerned with the unlawful burning of property or materials to provide a right of action against any such person or company for damages, civil fines and attorney fees — introduced by Sen. Dingell on 1/17/94 and referred to Committee on Judiciary.

SB 54 — Amends the solid waste management act to increase the fees charged for a solid waste disposal permit application — introduced by Sen. Dingell on 1/17/94 and referred to Committee on Natural Resources and Environmental Affairs.

SB 61 — Amends the mineral well act to prohibit supervisors from issuing a permit to drill or convert a well into a hazardous waste disposal well unless the well is located at least ten miles away from any school, preschool facility, hospital or correctional facility — introduced by Sen. Berryman on 1/17/94 and referred to Committee on Natural Resources and Environmental Affairs.

SB 62 — Amends the hazardous waste management act to prohibit the department from issuing a construction permit for a hazardous waste incinerator unless the incinerator is located at least ten miles away from any school, preschool facility, hospital or correctional facility — introduced by Sen. Berryman on 1/17/94 and referred to Committee on Natural Resources and Environmental Affairs.

SB 68 — Amends the farm land and open space preservation act to provide that farm land previously subject to the act will have liens reduced over a 7 year period in certain circumstances — introduced by Sen. Berryman on 1/17/94 and referred to Committee on Agriculture and Forestry.

SB 69 — Amends the wildlife conservation act to provide for the Natural Resources Commission issuing orders under the wildlife conservation act — introduced by Sen. Berryman on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 74 — Creates the marina and boat yard storage lien act to permit marinas and boat yards to place a lien on certain marine property stored at them and for the sale of the property subject to the lien — introduced by Sen. Berryman on 1/17/95 and referred to Committee on Transportation and Tourism.

SB 107 — Amends the act concerned with the establishment of city and village districts and zones to provide that a state licensed or registered family day care home be considered a residential use of property and be permitted in all residential zones, and provide

that a licensed group day care home be issued a special use permit, conditional use permit or other similar permit if the group day care home meets certain standards — introduced by Sen. Peters on 1/17/94 and referred to Committee on Local, Urban and State Affairs.

SB 108 — Amends the income tax act of 1967 to provide for certain property tax credit maximum amounts and, beginning in 1998, premise the maximum credit allowed upon the Detroit consumer price index — introduced by Sen. Peters on 1/17/94 and referred to Committee on Finance.

SB 110 — Creates an act providing for the licensing and regulation of lead abatement contractors — introduced by Sen. Shugars on 1/17/94 and referred to Committee on Health Policy and Senior Citizens.

SB 111 — Amends the Michigan occupational safety and health act to provide guidelines and otherwise regulate lead abatement contractor training — introduced by Sen. Shugars on 1/17/95 and referred to Committee on Health Policy and Senior Citizens.

SB 112 — Provides general amendments to the subdivision control act of 1967 — introduced by Sen. Stille on 1/17/94 and referred to Committee on Local, Urban and State Affairs.

SB 113 — Creates the development agreement act, which authorizes development agreements between developers and certain governmental entities and officials under certain circumstances — introduced by Sen. Stille on 1/17/94 and referred to Committee on Local, Urban and State Affairs.

SB 114 — Creates a bill to provide a standard for determining when property is specially benefited by an improvement financed by special assessments — introduced by Sen. Stille on 1/17/95 and referred to Committee on Local, Urban and State Affairs.

SB 115 — Creates an act permitting public agencies to adopt an official map of all or a portion of the area within the agencies' jurisdiction, showing all, or all of a certain type of, public facility of the public agency, in addition to regulating and prohibiting construction within the boundaries of existing or proposed public facilities — introduced by Sen. Stille on 1/17/95 and referred to Committee on Local, Urban and State affairs.

SB 129 — Creates the river basin management act providing for the establishment for certain river basin institutions, for the management of river basins, for the collection of certain fees and assessments, among other things — introduced by Sen. Cherry, Jr. on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 131 — Creates the Michigan recycling act concerned with regulating the sale and use of certain recyclable materials and promoting recycling, among other things — introduced by Sen. Cherry, Jr. on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 132 — Amends the solid waste management act to establish a comprehensive recycling program — introduced by Sen. Cherry, Jr. on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 139 — Creates the environmental ombudsman act prescribing the powers and duties of the office of environmental ombudsman — introduced by Sen. Cherry, Jr. on 1/17/95 and referred to Committee on Government Operations.

SB 140 — Amends the environmental response act to revise the cleanup standards for certain areas — introduced by Sen. Peters on 1/17/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 148 — Repeals the state real estate transfer tax act — introduced by Sen. Carl on 1/17/95 and referred to Committee on Finance.

SB 157 — Amends the environmental response act to establish an environmental exemption for certain property designated as part of an enterprise zone — introduced by Sen. Shugars on 1/31/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 158 — Creates the manufactured housing recovery fund act which establishes a manufactured housing recovery fund, provides for payments into that fund as well as procedures for claimants against the fund — introduced by Sen. Shugars on 1/31/95 and referred to Committee on Local, Urban and State Affairs.

SB 162 — Amends the occupational code to delete the term "community planners" and repeal various sections of the occupational code — introduced

by Sen. Shugars on 1/31/95 and referred to Committee on Economic Development, International Trade and Regulatory Affairs.

SB 165 — Amends the act concerned with the dissemination and display of pornographic materials to, among other things, permit local units of government to adopt an ordinance imposing a penalty upon adult businesses that knowingly disseminate pornographic materials within 1000 feet of a place frequented by minors — introduced by Sen. Shugars on 1/31/95 and referred to Committee on Local, Urban and State Affairs.

SB 177 — Amends the act concerned with the probation of prisoners to establish a probation residential program and alternative correction centers — introduced by Sen. Shugars on 1/31/95 and referred to Committee on Judiciary.

SB 190 — Amends the general property tax act to exempt property determined to be a wetland from taxation under the act — introduced by Sen. Dunaskiss on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 194 — Amends the great lakes submerged lands act to allow public hearings on applications for the construction of a marina — introduced by Sen. Dunaskiss on 2/1/95 and referred to Committee on Transportation and Tourism.

SB 195 — Amends the Goemaere-Anderson wetland protection act to provide that if a municipality does not approve or disapprove permit applications within 90 days, the permit application shall be considered approved and the municipality shall be considered to have made the determination in accordance with the act — introduced by Sen. Dunaskiss on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs; 2/23/95, reported favorably with amendment(s); 2/28/95, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s).

SB 196 — Amends the revised judiciary act of 1961 to permit licensed real estate brokers, associate brokers and salespersons who act as a landlord's property manager, to represent landlords in small claims court on security deposit disputes — introduced by Sen. Hoffman on 2/1/95 and referred to Committee on Judiciary; 2/15/95, reported favorably with amendment(s).

SB 202 — Amends the act concerned with the licensure and regulation of off road recreational vehicles to provide that an ORV operated solely on private property by the owner of the property, a family member of the owner or an invited guest of the owner, be exempt from the licensure provisions of the act — introduced by Sen. McManus, Jr. on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 206 — Amends the act concerned with the licensure and regulation of off road vehicles to prescribe how revenue and the ORV trail improvement fund shall be distributed and used, among other things — introduced by Sen. Schwarz on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 207 (Same as House Bill 4211) — Amends the dam safety act to extend the period of time for which a permit is not required under the act for the repair and improvement of certain dams located in certain areas — introduced by Sen. Schuette on 2/1/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 217 — Amends the environmental response act to provide general amendments to those sections concerned with the department's selection and approval of remedial action plans, the department maintaining and making available to the public a list of remedial action plans submitted for approval, notice to adjacent property owners of a remedial action plan, among other things — introduced by Rep. Young, Jr. on 2/2/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 218 — Amends the great lakes preservation act to establish a public review system for water diversions and consumptive uses — introduced by Sen. Young, Jr. on 2/2/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 219 — Amends the act prohibiting littering of public and private property to provide a civil cause of action against litterers — introduced by Sen. Young, Jr. on 2/2/95 and referred to Committee on Judiciary.

SB 230 — Amends the wildlife conservation act to eliminate the limitation on, or the special permit requirement for, possession of lawfully taking game beyond a certain number of days — introduced by Sen. Koivisto on 2/2/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 238 — Amends the environmental response act to exclude from the definition of "operator" and "owner" new owners of abandoned or condemned contaminated property, who have not caused or contributed to the release of the contamination — introduced by Sen. Rogers on 2/7/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 239 — Amends the revised judiciary act of 1961 to provide that when a writ of restitution is issued pursuant to an eviction proceeding, and property is removed from the premises and placed on public property, the parties to the eviction proceeding shall be responsible for the removal of that property — introduced by Sen. Hoffman on 2/7/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 255 — Amends the general property tax act to provide that in determining value, assessors shall consider only the existing use of the property at the time of the determination without regard to the highest and best use of the property — introduced by Sen. Stille on 2/8/95 and referred to Committee on Finance.

SB 257 — Creates the natural resources and environmental protection code to replace the natural resources and environmental protection act — introduced by Sen. Ehlers on 1/26/93 and referred to Committee on Natural Resources & Environmental Affairs; 6/8/93, general orders with amendment(s); 6/10/93, third reading with amendment(s); 6/15/93, amended, passed; 6/15/93, Committee on Conservation, Environment & Great Lakes; 5/10/94, reported with recommendation with substitute, referred to second reading; 5/25/94, substitute adopted; 6/22/94, made a special order on second reading for 10/5/94; 12/7/94, amended, amended, placed on third reading; 12/8/94, amended, passed, given immediate effect, returned to Senate; 12/13/94, House substitute concurred in, immediate effect defeated, ordered enrolled; 1/5/95, approved by the Governor; 1/6/95 filed with the Secretary of State, assigned PA 425 with immediate effect.

SB 264 — Amends the township rural zoning act to permit township boards to adopt ordinances authorizing the transfer of development rights to achieve development rights benefits, establish an authority for the purpose of purchasing and temporarily holding development rights, among other things — introduced by Sen. Honigman on 2/14/95 and referred to Committee on Local, Urban and State Affairs.

SB 265 — Creates a bill which allows public agencies to issue maps showing existing proposed public facilities — introduced by Sen. Honigman on 2/14/95 and referred to Committee on Local, Urban and State Affairs.

SB 266 — Creates the regional impact coordination act concerned with the prohibition of certain developments unless unreasonable impacts on services and facilities arising from the development are eliminated — introduced by Sen. Honigman on 2/14/95 and referred to Committee on Local, Urban and State Affairs.

SB 267 — Creates the development agreement act which authorizes development agreements between local units of government and developers — introduced by Sen. Rogers on 2/14/95 and referred to Committee on Local, Urban and State Affairs.

SB 286 — Amends the public health code to require health maintenance organizations' application for licensure include a description of their geographical service area, and impose certain restrictions on the geographical service area of an HMO — introduced by Sen. McManus, Jr. on 2/16/95 and referred to Committee on Health Policy and Senior Citizens.

SB 293 — Amends the act concerned with the protection and conservation of natural resources to require the department, prior to implementation of a program that imposes new regulations on local units of government, prepare an economic impact statement that details the effects of the new regulations on the local economy — introduced by Sen. Gougeon on 2/16/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 312 — Amends the hazardous waste management act to provide for a toxic use reduction program and provide a 5 year moratorium on the issuance of construction permits and operating licenses for a disposal facility or treatment facility that utilizes incineration in the processing of hazardous waste — introduced by Sen. Smith on 2/21/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 313 — Creates the yard clippings management act which provides for the regulation and management of certain compostable materials — introduced by Sen. Smith on 2/21/95 and referred to Committee on Natural Resources and Environmental Affairs.

SB 341 — Repeals the state real estate transfer tax act effective January 1, 1996 — introduced by Sen. Young, Jr. on 2/23/95 and referred to Committee on Finance.

SB 507 — Prohibits city zoning ordinances preventing residents from giving instruction in a craft or fine art (i.e., music lessons) in own home — introduced by Sen. Faxon on 3/17/93 and referred to Committee on Local Government & Urban Development; 4/29/93, general orders with substitute; 5/4/93, third reading with substitute; 5/6/93, passed; 5/6/93, Committee on Local Government; 9/20/94, reported with recommendation, referred to second reading; 11/29/94, placed on third reading; 11/30/94, passed, given immediate effect, returned to Senate; 12/7/94, immediate effect defeated, ordered enrolled; 12/14/94, presented to the Governor; 12/26/94, approved by the Governor; 12/27/94, filed with the Secretary of State, assigned PA 376 of 1994.

SB 509 — Amends the township rural zoning act to prohibit zoning ordinances preventing residents from giving instruction in a craft or fine art (i.e., music lessons) in own home — introduced by Sen. Honigman on 3/17/93 and referred to Committee on Local Government & Urban Development; 4/29/93, general orders with substitute; 5/4/93, third reading with substitute; 5/6/93, passed; 5/6/93, Committee on Local Government; 9/20/94, reported with recommendation, referred to second reading; 11/29/94, placed on third reading; 11/30/94, passed, given immediate effect, returned to Senate; 12/7/94, immediate effect defeated, ordered enrolled; 12/14/94, presented to the Governor; 12/26/94, approved by the Governor; 12/27/94, filed with Secretary of State, assigned PA 377 of 1994.

SB 510 — Amends the county rural zoning enabling act to prohibit zoning ordinances preventing residents from giving instruction in a craft or fine art (i.e., music lessons) in own home — introduced by Sen. Honigman on 3/17/93 and referred to Committee on Local Government & Urban Development; 4/29/93, general orders with substitute; 5/4/93, third reading with substitute; 5/6/93, passed; 5/6/93, Committee on Local Government; 9/20/94, reported with recommendation, referred to second reading; 11/29/94, placed on third reading; 11/30/94, passed, given immediate effect, returned to Senate; 12/7/94, immediate effect defeated, ordered enrolled; 12/14/94, presented to the Governor; 12/26/94, approved by the Governor; 12/27/94, filed with Secretary of State, assigned PA 378 of 1994.

SB 936 — Amends the act providing for the levying and collection of taxes by cities, to require a city with a population of more than one million to provide, by ordinance, a procedure to finance snow removal from streets, mosquito abatement, and security services by special assessments and authorize the use of petitions to initiate the establishment of a special assessment district — introduced by Sen. O'Brien on 12/1/93 and referred to Committee on Finance; 3/10/94, reported favorably with recommendation for referral to Committee on Natural Resources & Environmental Affairs, recommendation concurred in, referred to Committee on Natural Resources & Environmental Affairs; 3/22/94, reported favorably without amendment; 3/22/94, amended, reported by Committee of the Whole favorably with amendment(s), amendment(s) concurred in, placed on order of third reading with amendment(s); 3/24/94, passed, referred to Committee on Conservation, Environment and Great Lakes; 4/26/94, substitute adopted, reported by Committee of the Whole favorably with substitute, substitute concurred in, placed on order of third reading with substitute; 4/27/94, passed, referred to Committee on Local Government; 12/6/94, reported with recommendation with amendment(s), referred to second reading; 12/8/94, amended, placed on third reading; 12/13/94, passed, given immediate effect, returned to Senate, House amendment(s) concurred in, given immediate effect, ordered enrolled; 1/5/95, approved by the Governor; 1/6/95, filed with the Secretary of State, assigned PA 431, with immediate effect.

SB 1252 — Amends the act concerned with the regulation of off-road recreational vehicles ("ORV") to remove the sunset on ORV trails advisory committee and the development of a comprehensive system for the use of ORV routes and trails and provide for the implementation of a safety education program — introduced by Sen. Schwarz on 9/20/94 and referred to Committee on Natural Resources & Environmental Affairs; 12/6/94, reported favorably with substitute, referred to general orders, amended, substitute and amendment(s) adopted, reported by Committee of the Whole favorably with substitute and amendment(s), substitute and amendment(s)

concurred in, placed on order of third reading with substitute and amendment(s); 12/7/94, passed, referred to Committee on Conservation, Environment & Great Lakes.

SB 1306 — Amends the general property tax act to implement the proposal A assessment cap — introduced by Sen. Emmons on 11/10/94 and referred to Committee on Finance; 12/1/94, reported favorably with substitute; 12/8/94, referred to Committee on Finance.

SB 1307 — Amends the school code of 1976 to prohibit a levying of enhancement millage accompanied by a decrease in homestead mills — introduced by Sen. Emmons on 11/10/94 and referred to Committee on Finance; 12/1/94, reported favorably with substitute, referred to general orders, reported by Committee of the Whole favorably with substitute, substitute concurred in, placed on order of third reading with substitute; 12/8/94, referred to Committee on Finance.

SB 1329 — Amends the Michigan penal code to provide penalties for placing graffiti upon the property of another — introduced by Sen. Hart on 12/6/94 and referred to Committee on Judiciary.

SB 1331 — Creates an act providing for the creation of a casino control commission and to provide for the control, regulation and licensing of casino and riverboat casino gaming — introduced by Sen. Faust on 12/7/94 and referred to Committee on State Affairs & Military/Veteran Affairs.

RECENT DECISIONS

by *Joseph Lloyd*
Chard & Lloyd
201 E. Washington
Ann Arbor, Michigan 48104

People v Lee, ___ Mich ___; ___ NW2d ___ (Docket Nos. 96876 & 96877, December 27, 1994)

Usury - Option to Repurchase

The question before the Supreme Court (in the context of a criminal prosecution for violation of the usury statutes) was whether a "loan" had been granted where personal property was exchanged for cash together with an option to repurchase the property within a fixed time at a significantly higher price. In this case, the defendant had obtained a Rolex watch for $2,600, and had granted the "seller" the right to repurchase it a month later for $3,400. There was testimony that the watch was worth five or six thousand dollars and that the former owner did not want to sell it.

The trial court, affirmed by the Court of Appeals in an unpublished opinion, held that the transaction constituted a loan. The Supreme Court, by a 4-3 majority, reversed. It concluded that the option did not carry with it an obligation to repay the money and, absent such obligation, there was no loan. The court concluded that where there was a bona fide "sale," with the passing of title for consideration. In reaching its conclusion, the court cited a number of cases that concerned transfer of title to real property, and this holding, therefore, should be equally applicable in the context of real estate.

Mills v Pesetzky, ___ Mich App ___; ___ NW2d ___ (File No. 157395; December 29, 1994)

Usury - Computation

The defendant purchased a home from plaintiff by land contract. The price was $65,000, with $45,000 bearing interest at 12% per annum and $20,000 bearing interest at 8%. The two sums were due at the same time. When Defendant failed to make the required monthly payments, Plaintiff sought to foreclosure the contract, and Defendant raised a claim of usury. The Court of Appeals, aggregating the sums due and the interest that would be paid on them concluded that the total loan was not usurious, and upheld the foreclosure judgment of the trial court.

Bomarko, Inc. v Rapistan Corporation, ___ Mich App ___; ___ NW2d ___ (File No. 157898; December 5, 1994)

Proration of Taxes

The Plaintiff and Defendant were parties to a sales agreement dated in January, 1990, which closed on February 16, 1990. The agreement provided:

> Property Taxes and Assessments which are due and payable, or a lien or both, on the property on or before this date, shall be paid by Seller WITHOUT PRORATION. After this date all special improvements now installed but not yet a lien shall be assumed by Buyer. Exceptions Seller to be responsible for all taxes due and/or payable at time of close. Note per this paragraph the term "this date" to be date of close.

The language beginning with the word "Exceptions" was handwritten by the Plaintiff/purchaser. The question before the Court of Appeals was which party was obligated to pay the property taxes that came due in 1990.

A divided court of Appeals first noted that the taxable status of the property, including its value and the Defendant's responsibility as owner of record for the 1990 taxes was determined as of December 31, 1989. MCLA 211.1; MSA 7.2. The court held, however, that statutory provisions regarding proration of taxes were inapplicable because the parties had agreed to a different method of payment. In reviewing the language of the sales agreement, the court held that the 1990 taxes were due, if not payable, as of the February

closing, and held that the Seller was obligated to pay the 1990 taxes.

Samonek v Norvell Township, ___ Mich App ___; ___ NW2d ___ (File No. 147724; December19, 1994)

Tax Assessments - True Cash Value

The question before the court concerned the method of computing the true cash value of property for tax purposes. The Township assessor had relied on county equalization land value grids for the years in question. At the Tax Tribunal hearing, the property owners challenged the assessments based on evidence of the sales price of a number of comparable properties in the area not considered by the equalization department. The Assessor had declined to consider these sales arguing, in one case, that conveyance by quitclaim deed was an indicator that the consideration was less than market value, in a second case that a land auction sales price was not an indicator of market value, and in a third case, that a sale by the Federal Land Bank (where the property had been advertised for sale by the Land Bank for over a year) was often for less than true value. The Tax Tribunal found the Assessor's methodology more credible than the Petitioner's and upheld the assessment.

The Court of Appeals rejected the arguments of the Tax Tribunal. It held that the Tribunal erred by summarily rejecting as evidence the sales proffered by Petitioner. The Tax Tribunal must consider the sales prices of comparable parcels not sold at auction or forced sale in determining the true cash value of a subject property. It ordered the case remanded for the Tribunal to determine whether the auction sale was a part of a liquidation in bankruptcy, and whether the Land Bank sale was a "forced sale." It noted that the fact that the sale was by quitclaim deed may go to its weight as evidence, but not to its admissibility.

CONTINUING LEGAL EDUCATION

by
Jack D. Shumate, Chairperson
and
Arlene R. Rubinstein, Administrative Assistant

HOMEWARD BOUND

The 1994-95 Homeward Bound Series will conclude with two excellent presentations. The April seminar entitled "Surveys, Descriptions, and Boundary Disputes" will be presented by Stephen G. Palms of Miller, Canfield, Paddock & Stone and Raymond J. Donnelly of Raymond J. Donnelly & Associates.

In May, William B. Acker of Kemp, Klein, Umphrey & Endelman, Michael R. Atkins of Miller, Canfield, Paddock & Stone and Louis S. Weller of Weller & Drucker will speak on "Tax Free Exchanges — Hot Nationally! Why Not in Michigan!"

We are pleased Mr. Louis Weller of Weller & Drucker in San Francisco will join us for this meeting. Mr. Weller has extensive experience designing and implementing strategies for business start-ups, limited liability companies, partnership and joint venture formations, real estate acquisitions, transfers, exchanges, leases financing, work-outs, capital raising through placement of partnership interests and stock, as well as counseling clients on achieving business and personal tax planning objectives. He currently serves as Vice-Chair of the Real Estate Committee and is former Chair of the Subcommittee on Like-Kind Realty Exchanges, American Bar Association Tax Section. Mr. Weller is a frequent speaker and author in the fields of tax, business law and real estate.

Walk-ins are welcome - $50 for Section members and $65 for Non-Section members. Please call Arlene Rubinstein at 810-644-7378 for further information.

TWENTIETH ANNUAL SUMMER CONFERENCE
CURRENT DEVELOPMENTS AND PRACTICE TIPS - 1995
SHANTY CREEK RESORT
BELLAIRE, MICHIGAN
JULY 19-22, 1995

The Twentieth Annual Summer Conference entitled "Current Developments and Practice Tips -1995" will be held July 19-22, 1995 at Shanty Creek Resort in Bellaire, Michigan. The resort complex includes three championship golf courses, indoor - outdoor pools, whirlpools, Health Club, eight tennis courts, beach club, children's programs and more!

Dennis Gannan of Dykema Gossett is in the process of planning a potpourri of topics designed to appeal to all lawyers practicing real estate law. Look for further information later this month.

Rooms have been reserved for Conference Registrants at Shanty Creek Resort at the following daily rates:

	Single Occupancy	Double Occupancy
Guest Room	$104.00	$114.00
Studio	$135.00	$135.00
One Bedroom Condo	$150.00	$150.00

Rates are per room, per day, plus 6% state and 2% local taxes.

Please plan to attend our Welcoming Cocktail Party on Wednesday, July 19, 6:30 to 8:30 p.m. Enjoy drinks (beer, wine and soft drinks are complimentary) and hors d'oeuvres to the sound of the piano played by Dr. Damon Adams.

This year's Section dinner, Thursday, July 20 at 8:00 p.m., will be a casual, outdoor barbecue with Mr. Tommy Tropics entertaining children and adults with magic, unicycle tricks and more. Dinner is $22.25 per person. Child's dinner is $11.25 per child. We will serve a combination of white fish and barbecue chicken. Prepayment is required. Please send payment to Real Property Law Section, P.O. Box 473, Birmingham, MI 48012.

Cancellations received at least 48 hours prior to the dinner will be honored.

The registration fees for this conference will be as follows:

Before June 1, 1995	Section members:	$175
	Non-Section members:	$200
After June 1, 1995	Section members:	$200
	Non-Section members:	$225

Upon receipt of your Conference registration fee by the Real Property Law Section, you will be forwarded a room reservation form.

Make checks payable to: Real Property Law Section and Mail to: P.O. Box 473, Birmingham, MI 48012. For further information, please call Arlene Rubinstein at 810-644-7378.

COURSE CALENDAR

Set forth below is a schedule of continuing legal education courses sponsored or co-sponsored by the Real Property Law Section through July 1995.

Key: HB = Homeward Bound
ICLE = Courses co-sponsored by the Institute of Continuing Legal Education

Date	Location	Program	Topics
April 12	L. V. Eberhard Center Grand Rapids	ICLE	Michigan Construction Lien Practice
April 13	Management Education Center MSU Troy	HB	Surveys, Descriptions and Boundary Disputes
April 27	Management Education Center MSU Troy	ICLE	Michigan Construction Lien Practice
May 18	Management Education Center MSU Troy	HB	Tax Free Exchanges
June 8	L. V. Eberhard Center Grand Rapids	ICLE	Sharing & Shifting Environmental Liabilities & Costs
June 23	Management Education Center MSU Troy	ICLE	Sharing & Shifting Environmental Liabilities & Costs
July 19-22	Shanty Creek Resort Bellaire, MI	Summer Conference	Current Developments and Practice Tips - 1995

VIDEO

"Sharing and Shifting Environmental Liabilities and Costs"

Ann Arbor	July 12
Traverse City	July 13
Detroit	July 24
Lansing	August 1
Kalamazoo	August 2

"Michigan Construction Lien Practice"

Ann Arbor	May 24
Traverse City	June 1
Marquette	June 8
Lansing	June 13
Kalamazoo	June 14
Bay City	June 14
Detroit	June 19
Flint	June 20

"Michigan Real Property Disputes"

Ann Arbor	April 17
Grand Rapids	April 17
Marquette	April 20
Kalamazoo	April 26
Traverse City	April 27
Bay City	May 3
Detroit	May 15
Flint	May 16

For further video information, please call ICLE, 313-764-0533.

The Michigan Association of Certified Public Accountants
and
The Taxation Section of the State Bar of Michigan

presents the

CPA/ATTORNEY CONFERENCE

Thursday, May 11, 1995
Sheraton Inn, Novi

Featuring: A panel discussion on

"Aspects of Buying and Selling a Business"

with experts in the areas of
• Investing • Valuation • Environmental Issues • Labor/Welfare • Taxation

Including Breakout Sessions on:

- Passing the Torch — Management Succession in the Family
- Business Valuations
- Update on Estate and Gift Taxation
- LLC's and LLP's — Qualifying as a Partnership and Current Issues
- Environmental Issues of Buying and Selling a Business
- Qualified and Nonqualified Plan Update
- Employment Law Update
- Michigan Tax Update
- Financial Planning for the Elderly
- Current Tax Issues of the IRS
- Federal Legislation Update
- * Marketing the Professional Practice
- Update of Federal and State Taxation of S Corporations

Agenda:

Registration Begins: 8:00 AM
Conference Program: 8:50 AM to 4:30 PM
Networking Session: 4:30 PM to 5:30 PM

Registration Fee: $120.00

For further information, please contact the MACPA Conference Department at (810) 855-2288.