

MEMORANDUM

TO: Real Property Law Section Council

FROM: Jason Long

DATE: February 8, 2024

SUBJECT: Legislative Committee Report

1. **Monthly Call.** Since the last RPLS Council meeting, the ad hoc Legislative Committee met via Zoom on February 6, 2024. Jason Long and David Pierson held a call with Tabitha Zimny from Karoub & Associates in advance of the Committee meeting to provide updates on legislative matters.
2. **Recent Developments.**
 - a. **Marketable Record Title Act.** The Legislative Service Bureau provided a draft bill for the six-month extension. Tabitha is contacting Sen. Jeremy Moss from Southfield to sponsor the bill. The bill would extend the MRTA deadline from March 29, 2024, to September 29, 2024. A copy of the bill is provided with this Report.

The focus is on the extension for now, so there are no developments to report with the “comprehensive fix” bill. We have submitted a proposed bill that we agreed on with ICSC to Rep. Fitzgerald, who had agreed to sponsor the bill, with the intent that the bill will be introduced when the Legislature returned to session in January 2024. A copy is also attached with this Report.

Regardless of our efforts with the extension and the comprehensive fix, it is entirely possible that the existing March 2024 deadline will pass without any changes to the MRTA.

- b. **Partition of Heirs Property.** HB 4924 was introduced during July 2023. It was the subject of a hearing during the week of January 29, 2024, where it received favorable comments from the judiciary committee. The bill would include a new chapter in the Revised Judicature Act implementing the Uniform Partition of Heirs Property Act. One apparent intention of this bill is to alleviate the loss of property for people already suffering economic disadvantage. The Legislative Committee does not wish to stand in the way of that policy goal. Nevertheless, the problem is that the bill establishes a number of procedures that would apply, and says that they supersede other provisions in the RJA. But the court rules govern partition, so the bill sets up a conflict between the applicable court rules and the bill if it were adopted. The Legislative Committee recommends opposing the bill in its current form because of that conflict. A copy of the bill and a draft position statement are provided with this Report.

- c. ***Kessler v Longview Agriculture Asset Mngmt-Fix Bill.*** Recall that *Kessler* concluded that the purchaser at a mortgage foreclosure sale can wait until the day before the redemption period expires to record the sheriff's deed, and the redemption period will expire the following day. The Council passed a resolution supporting our proposed amendments to MCL 600.3232 and MCL 600.3240 to correct this. The Legislative Service Bureau has prepared a bill, a copy of which is provided with this Report. Tabitha is attempting to get Rep. Steckloff, who previously had agreed to sponsor the bill, to get it introduced.
- d. **Accessory Dwelling Units.** The Legislative Service Bureau has prepared a bill to eliminate prohibitions against accessory dwelling units. It has not been introduced. Another version of such a bill may be forthcoming. A copy of the drafted bill is provided with this Report.
- e. **Tenancy by the Entireties Bills.** Previously, David sent Tabitha a list of statutes to be amended to correct the lingering issues arising out of Michigan's failure to implement the Supreme Court's decision in *Obergefell v Hodges*. Fourteen bills were introduced to remedy the issues (with various sponsors but organized by the legislative LGBTQ+ Caucus). As introduced, all of the bills are tie-barred to 2023 House Joint Resolution F, which would amend the Michigan Constitution by striking Const 1963, art 1, § 25, the provision for "one man-one woman" marriage adopted in 2004, and amending Const 1963, art 10, § 1, which related to coverture, to make it gender-neutral. The amendments would require approval by statewide vote. Because the bills were tie-barred to HJR F, nothing will happen with them until that vote takes place.

TBE issues are happening in real time, however, so the Legislative Committee has continued to pursue these issues. Tabitha continues to work to try to get a bill introduced to address these matters.

3. **RPLS Positions.**

- a. **Blight Citations.** At the Council meeting on September 13, 20223, Council voted to oppose HB 4332, which would amend the Home Rule Cities Act to provide for certain citations for property owners whose properties have blight violations, based on the bill allowing service by first-class mail and email if there is a "good faith" effort at personal service that fails, which can lead to blight violations and even criminal convictions. The bill nevertheless passed the House on September 26 and was referred to the Senate.
- b. **Prompt Pay Bills.** At the Council meeting at the summer conference on July 21, 2023, Council voted to oppose HB 4837 and SB 0451, which are the subcontractor "prompt payment" bills. Since their introduction, there has been no activity with these bills.
- c. **Foreign Ownership.** At the last Council meeting, we decided to monitor HB 5050 and HB 5073. They were introduced but the Legislature has not taken any action on them, and now is out of session until January.

d. Tax Tribunal. Council voted to oppose SB 19 and SB 20, which would take certain cases involving commercial property away from the Tax Tribunal and grant jurisdiction over them to a local board. These bills were a reaction to the courts' treatment of a tax case called *Menard's, Inc v City of Escanaba*, involving "big box" stores. There has been no activity since the bills' introduction.

4. Old Business.

- a. Alternative Energy and Owners Associations.** We decided to monitor HB 5109 and HB 5028, both of which would impact the power of homeowners and condo associations regarding alternative energy installations. Afterward, the Condo Committee provided a comprehensive analysis of the bills and suggested that the RPLS oppose the bills. HB 5028 has now passed the House and is pending in the Senate. Tabitha advises that the policies reflected in these bills are the type of policies that the Legislature as a whole wants to promote.

The Legislative Committee reviewed the Condo Committee's analysis and found it insightful and persuasive. But with HB 5028 passing the House and the general support for these policies, the Legislative Committee concluded that opposing the bills is likely futile. The better approach would be to try to influence them to render them more acceptable.

To that end, the Legislative Committee prepared proposed revisions to HB 5028, which are being provided with this Report. The Committee proposed that Council authorize conditional opposition to the bills unless our revisions or revisions that accomplish the same clarifications are implemented. At the November Council meeting, the decision was for Council to continue to study the proposed amended language and determine whether to take any action.

There has been no activity with these bills since November.

- b. Housing.** The Legislature saw a number of bills pertaining to housing introduced since our last Council meeting. They are listed in the "new legislation" section of this Report, but include bills pertaining to landlord-tenant issues involving security deposits, utilities, and other mostly residential-oriented matters. Tabitha advised that these bills are unlikely to receive any serious consideration and that the Speaker of the House apparently has no intent to bring them to a vote. Accordingly the Legislative Committee recommends no action on these bills.
- c. Alternative Energy.** Bills were introduced, approved by committees, and adopted by the Legislature to allow the Michigan Public Service Commission to site alternative energy installations such as solar farms and windmills notwithstanding local zoning. Two of the bills were adopted as 2023 PA 233 and 234. These bills moved on a schedule that did not allow the RPLS to take a position.

- d. **2022 PA 234, MCL 565.861 *et seq.*** This was the act adopted to allow for removal of racial and other odious restrictive covenants from title documents. The RPLS had suggested revisions pertaining to the capacity of the persons signing the documents to remove the restrictions. The act was adopted without our revisions. Sen. Anthony initially expressed that she would work with us to address the revisions but then declined to do so. Tabitha is continuing to work on getting us back in front of Sen. Anthony and her staff to address our concerns.

- 5. **New Bills.** The Legislature returned to session in January 2024. Few bills pertaining to real property have been introduced since then.
 - a. **HB 5419 and 5420:** Property taxes/special assessments: These bills propose amendments to 1976 PA 225, focusing on expanding and refining the deferment of special assessments on homestead properties. Bill No. 5419 updates requirements for deferment of special assessments to clarify an individual must be a US citizen, increases the income threshold and adds a provision to adjust the income limit based on inflation. There are also updates to the deferment application process, including state liens on properties. Bill No. 5420 adds a definition of “sole owner” and makes some minor revisions that don’t appear to be a substantive change to the current law.

 - b. **SB 700:** Updates the "Recodified tax increment financing act" which addresses downtown development authorities. It adds an eligibility requirement for a municipality which “is located on both the mainland and 1 or more islands, and a body of water lies between the 2 separate and distinct geographic areas.” There does not appear to be any other substantive changes.