

Chairperson's Report

by David E. Pierson

The Real Property Law Section is best known for its publications and its broad range of continuing education, including the four Homeward Bound sessions and four Groundbreaker Breakfast Roundtables each year, the annual Summer Conference and Winter Conference, as well as more informal sessions throughout the year for new lawyers. Many of us originally joined the Section in order to receive the Real Property Law Review. A year as chair magnifies one's sense of wonder at the number of people who make the Section work and their level of commitment, with the hours of planning and preparation put in by the authors, program chairs, moderators, and speakers; we all owe them our thanks.

Somewhat less visible is the Section's long history of active advocacy on real property law issues in legislative, administrative, and judicial proceedings. The members of the Section Council seek out those issues, debate them, and for the most part are responsible for putting that advocacy into action. I have had the good fortune to serve with a Council that is active, vocal, and well-informed, with the added assistance of recent former chairs who are not afraid to weigh in. Three years ago, representatives of the Section began a regular series of meetings with House and Senate committee chairs at the beginning of each legislative session. The idea is to offer the Section's assistance earlier in the legislative process to avoid legislation based on wrong assumptions concerning real property law and, at times, just bad drafting. The meetings also may help establish the Section's credibility when it takes a position on bills. By resolving or explaining the issue of a constituent whose problem is driving a proposed change in the law, the Section can sometimes avoid complicated solutions to simple problems—for example, a proposed amendment to the Land Division Act to change the number of permitted divisions solely for land owned by an intermediate school district used in its construction training classes, when a simple site condominium provided an answer. Or avoiding the creation of new problems when solving old ones—like a proposed package that would abolish dower but effectively create a whole new class of property rights for all spouses, applied retroactively. Despite years of ef-

fort, the Section is unable to prevent the introduction each session of one or more bills to abolish adverse possession, driven by the persistent belief that adverse possession is only used to legalize the theft of property from innocent owners. The proposals range from immunizing property for which the owner has paid taxes (presuming a precision in tax parcel descriptions that even the sponsor admitted to be wrong) to outright abolition. The good news is that to date the Section has convinced the Legislature that adverse possession claims are just one of a number of claims where justice must be administered according to concepts best applied by courts to a particular set of facts; simply abolishing the legal means for property owners to resolve those disputes will not make the issues go away.¹ Ronn Nadis deserves mention for his repeated trips to Lansing and testimony before legislative committees the last three sessions on this issue.

In other cases, the Section has been able to negotiate amendments, avoiding problems in legislation that the Section could otherwise support. A good example is 2013 PA 134, amending the Condominium Act provisions that require all associations to have their books reviewed by an accountant, by setting an annual income threshold for review or audit to account for site condominiums with few, if any, common areas and the many condominium projects with no functioning association at all.

In administrative rule-making, the Section most recently adopted a position opposing the proposed amendment to the Michigan Court Rules setting new stringent limits on the citation to unpublished opinions of the Court of Appeals. The reasons are explained in more detail in the [position](#) adopted by the Section Council and posted on the Section Connect page, but the position was adopted in part because real property practitioners in their daily practice need to use the many unpublished opinions of the court to advise their clients, particularly in light of the limited number of published opinions.

Because we are a section of volunteers, writing and filing *amicus* briefs is a responsibility that is important,

1 All of the Section's legislative position can be found on a State Bar website Public Policy page [for the Section](#).

but also difficult, given the commitment of time and the responsibility of speaking on behalf of the Section. When invited to do so by the Michigan Supreme Court, the Section has always filed a brief. The Court did so in *Tus v Hurt*, 486 Mich 910 (2010), a case in which the trial court extended the redemption period in a statutory foreclosure by advertisement to avoid what it concluded was an inequitable result. The Court of Appeals reversed, but its reasoning was spare, and the Supreme Court sought additional briefs. The Section's volunteer author, Scott Timmer, and the amicus committee concluded that broad and longstanding Michigan authority, including cases of statutory foreclosure by advertisement, supported the holding of the Court of Appeals, consistent with Michigan authority in providing an exception for fraud, accident, or mistake. The facts of the mortgagors' claim, although unfortunate, did not appear to meet those exceptions, and also did not suggest other remedies under current Michigan law. For the Supreme Court to extend the remedies available in equity in such a case, either by unjust enrichment or otherwise, would be a policy decision, and the Real Property Law Section would leave that to others to advocate.² The Section also filed a brief in *Residential Funding v Saurman*, 490 Mich 909 (2011), asking the Supreme Court to grant leave, review the decision of the Court of Appeals invalidating tens of thousands of MERS foreclosure sales and, in turn, subsequent sales, both to provide certainty for future decisions and to consider the question of why the foreclosure should be treated as void rather than voidable, in light of the Michigan cases applying and distinguishing the two. In *Beach v Lima Township*, 489 Mich 99 (2010), the Section filed a brief in support of the holding of the Court of Appeals that an adverse possession claim, even to property dedicated in a plat, does not require an action under the Land Division Act. The Court agreed with the Section's position that the two claims are distinct, have different elements and proofs, and in many cases, different parties and a different legal effect. As a voluntary association of real property attorneys, the Section is able to provide the courts with the broad range of expertise of our over 3,000 members, with a depth of both practical and legal experience, and a broader perspective.

The positions adopted on legislation can be found on the State Bar's Public Policy [page](#), and current administrative positions and *amicus* briefs on the Section's Connect

[page](#), under the Public Resources tab. The [Section Council and officers](#) rely on members to look for the legislation, regulatory proposals, and cases that the Section should address, and to help research and write *amicus* briefs and policy statements on legislative and regulatory issues: let us know.³ Brian Henry, the next Chair, is an able leader, with experience early in his career with legislative and public policy issues. As Chair-Elect, he has put both the Review and e-Newsletter on a good footing for the future, but has done much more than that for the Section, and we look forward to the next year under his leadership.

2 Scott Timmer is due the Section's gratitude and sympathy; the day before the brief was to be filed, the Court dismissed on stipulation of the parties, who had settled.

3 The Section Council and officers, in turn, rely on Karen Schwartz, our administrator, whose tireless efforts to support the Section's work and keep us on task deserve special thanks.