

MEMORANDUM

TO: Real Property Law Section Council

FROM: Thomas A. Kabel

DATE: September 11, 2020

SUBJECT: Legislative Report

1. **Monthly Call.** The Committee met virtually on Monday, September 14, 2020 to discuss whether any current legislation (newly introduced or prior bills of interest) merits particular discussion at the September Council meeting. Please see item 3, below.
2. **Marketable Title Act.** Please note the following developments regarding proposed modifications to the Marketable Record Title Act:
 - **HB 5611 (Marketable Title Act)**, which would modify the number of years an interest, claim or charge can be preserved, passed the House on September 10, 2020 (372 Yeas to 107 Nays). As a refresher, this bill would move the effective date of the Marketable Record Title Act to March 29, 2024.
 - **HB 5260 (Condos)**, which would exempt certain instruments relating to condominiums from the marketable record title act, recently had a hearing in the House Ways & Means Committee.
 - A more comprehensive bill has been drafted by the Section's Ad Hoc Committee on MRTA, led by Nick Scavone, but has not yet been introduced.
3. **Bills of Interest; New Acts.** As noted in the attached Report, the Legislature is currently in session through the 3rd week of September, and will then come back for a Lane Duck session at the end of the year. The following bills have been introduced since the prior Report and may be of interest to the Section:
 - **SB 1056 (Foreclosure)** would (A) allow foreclosing governmental entities the ability to cancel a foreclosure under certain circumstances and for a limited period of time; and (B) provide the holder of a property interests extinguished by foreclosure to make a claim to the proceeds from a subsequent sale. This bill had a hearing in the Senate Finance Committee on September 9, 2020.

Link to Bill:

<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/Senate/pdf/2020-SIB-1056.pdf>

Link to Summary:

<https://www.legislature.mi.gov/documents/2019-2020/billanalysis/Senate/pdf/2019-SFA-1056-G.pdf>

Comment: The Legislative Committee does not recommend the Section take a position since the bill does not appear to negatively impact the efficient administration of real estate law.

- **HB 6036 (PACE)** would expand PACE to include residential properties. This bill was introduced and a hearing was held in the House Energy Committee on September 15, 2020.

Link to Bill:

<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6036.pdf>

Link to Summary:

<https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-6036-A32538B4.pdf>

Comment: According to our lobbyist, bankers, realtors, DIFS and credit unions all oppose the bill (primarily on the grounds that the PACE loans become part of the tax bill which has super priority over commercial mortgages) and have asked MMLA and RPLS to join in opposition. The Legislative Committee does not recommend the Section take a position since the bill does not appear to negatively impact the efficient administration of real estate law, and since the Section's membership would likely be on both sides of the issue.

- **Various Bills (14)** would remove gender-specific marriage references in various statutes.

Link to Bills: See attached list with hyperlinks.

Comment: See attached memorandum from David Pierson explaining his issues and concerns with the various bills, as well as his recommendation that the Section support the bills, with potential modifications identified in his memorandum. Also attached is the bill referenced in Mr. Pierson's memorandum which was introduced in 2015/16.

4. **Pending Legislation; Positions.** As was true with the Legislative Report for July, current bills on which the Section previously took action remain in committee and have not advanced.
5. **Prior Bills.** There was no activity on the previously noted bills of interest: Emotional Support Animals (SB 609, SB 610), Soil Erosion (SB 0714), Tree Liability (HB 4915), and Assignment of Rents Statutes (HB 5091, 5092). The following previously reported bills, though not considered of any particular importance to the Section, have had a change in status since the prior Report:
 - **SB 676 (Property Tax)**, which would modify the General Property Tax Act as it relates to distribution of revenue from sale of foreclosure, had a hearing in the Senate Finance Committee on July 22, 2020.
 - **SB 943 (Summer Property Taxes)**, which would extend payment deadline for summer 2020 property taxes, passed the Senate, was referred to the House Appropriations Committee on June 24, 2020, passed the House and has been returned to the Senate.
 - **HB 4851 (Property Tax)**, which modifies personal property tax exemption for disabled veterans, passed the House and moved to the Senate Floor with S-1 Sub.

- **HB 4927, 4928 & 4929 (Property Tax)**, which modifies local community stabilization share revenue distribution, passed the House and was referred to the Senate Finance Committee, which conducted a hearing on September 9, 2020.
- **HB 4930 (Property Tax)**, which would modify reporting deadlines and procedures for certain distribution calculations, moved to the Senate floor on September 9, 2020.
- **HB 5126 (Drains)**, which would revise requirements to petition to add or remove lands and notice of receipt of bids and review of apportionments, passed the House and was referred to the Senate Local Government Committee.

List of Bills To Remove Gender-specific Marriage References in Michigan Statutes

- 6048: Amends §27a of GPTA to remove references to gender in relation to transfer of ownership interests.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6048.pdf>
- 6050: Amends 1909 PA 259 (re: divorce judgments) to remove references to gender in relation to nature of ownership interest in real estate upon decree of divorce.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6050.pdf>
- 6060: Amends 1981 PA 216 (re: rights of married women in certain property) to remove references to gender in relation to ownership interests of married women.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6060.pdf>
- 6062: Amends 1976 PA 225 (re: collection of special assessments on homestead properties) to remove references to gender in relation to special assessments for a homestead owned by spouses.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6062.pdf>
- 6063: Amends 1975 PA 2288 (re: equalization of income rights of husband and wife) to remove references to gender in relation to income rights in property held as tenants by the entireties.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6063.pdf>
- 6067: Amends 1925 PA 126 (re: survivorship of entireties interest in mortgages and land contracts) to remove references to gender in relation to land contracts and obligations secured by mortgage as part of purchase price for lands held as tenants by the entireties.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6067.pdf>
- 6069: Amends 1929 PA 137 (“Summer Resort Owners Act”) to (1) remove references to gender in relation to the vote of spouses who own property by the entireties; and (2) clarify manner in which membership interest in summer resort corporation is terminated upon various dispositions of interest in real property.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6069.pdf>
- 6072: Amends 1899 PA 188 (“Michigan Estate Tax Act”) to remove references to gender in relation to the definition of “qualified heir”.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6072.pdf>
- 6077: Amends 1927 PA 210 (re: termination of tenancies by the entirety) to remove references to gender in relation to termination of tenancies by the entireties.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6077.pdf>
- 6079: Amends 1961 PA 236 (“Revised Judicature Act”) to remove references to gender in relation to certain actions and liens under the Revised Judicature Act related to real property.

<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6079.pdf>

- 6081: Amends 1846 RS 1 by amending section 45 to provide that section 44 (which relates to certain of tenancy in common unless otherwise specified) does not apply to a mortgage or conveyance to personal representative or spouse.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6081.pdf>
- 6085: Amends section 5 of 1966 PA 134 (“State Real Estate Transfer Tax Act”) to remove references to gender in relation to exemption for conveyances from spouses creating or disjoining tenancy by the entireties.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6085.pdf>
- 6095: Amends section 2 of 1966 PA 134 to remove references to gender in relation to confirmation of deeds and instruments intended for conveyance of real property.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6095.pdf>
- 6096: Amends 1948 PA 39 to remove references to gender in relation to community estate in real property between spouses.
<https://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2020-HIB-6096.pdf>
- HJR-T: Amends Michigan Constitution to remove references to gender in relation to Michigan constitution’s article regarding real estate acquired before marriage.
<https://www.legislature.mi.gov/documents/2019-2020/jointresolutionintroduced/House/pdf/2020-HIJR-T.pdf>

MEMORANDUM

To: Tom Kabel
From: David Pierson
Re: Removal of Gender-Specific References to Marriage
Date: September 15, 2020

A 14-bill package (see attached) would remove references to husbands and wives in the 14 statutes amended, substituting “spouse” or a description such as “married couple” or “married individual.” These bills are revised versions of draft bills from 2015 and 2016 which the Section’s Ad Hoc Committee on Real Property Issues for Same-Sex Marriage, in a workgroup convened by then-Senator Rick Jones, worked with the Probate and Estate Planning Section and the Family Law Section.

At the time, the package would have included a separate bill, a draft of which is attached, to do two things: first, obviate the need for litigation and remove any doubt that the terms of the Supreme Court’s decision in *DeBoer v Snyder* would require a same-sex married couple be permitted to hold property as tenants by the entirety. As was the case with dower, tenancy by the entirety in Michigan is a combination of common law and statute. Existing law refers to the rights of “a husband and wife” to take title by the entirety, raising questions as to whether such right applies to a same-sex couple who now marry in Michigan. A second issue is raised by the fact that current law says that a couple can hold property as tenants by the entirety only if they were married at the time they took title to the property. For example, an engaged couple who bought a home on Tuesday and were married on Wednesday would not be deemed to

own the home as tenants by the entirety. This raises significant issues as it relates to same-sex couples who were previously married in another state. If two women who were legally married in Massachusetts in 2005 moved to Michigan in 2010 and bought a home, do they now hold their property as tenants by their entirety? Although they were married when they bought their Michigan home, at the time, Michigan did not recognize the validity of their marriage. The uncertainty creates issues for mortgages, for transfers of their property to others, and for the rights of the heirs or the creditors of either or both spouses. Legislation directly addressing the issue could resolve these questions both as to title already held by same-sex married couples and as to future transfers. The separate bill also resolved issues raised by the Probate and Family Law Sections.

The effort fizzled when Senator Jones concluded that he would not be able to muster the political support needed to pass the bills. That may still be the case today. All of the sponsors of the current package are Democratic representatives. The package also includes a resolution that has no chance of passing in the current legislature: It would amend the Michigan Constitution to remove the provision added by initiative in 2004 recognizing marriage only between a man and a woman,

Even without a specific tenants by the entirety bill, the package would go a long way to resolving the issues of ownership as tenants by the entirety for same-sex couples under current statutes and help avoid needless litigation. For those reasons, the bills promote the goals of the Section with respect to real property law and deserve the Section's support.

With that said, several of the bills could be drafted better. For example, by using the term, "spouse," repeatedly without regard to whether it is replacing "husband" or "wife," the first section of HB 6050 on the disposition of insurance in divorce decrees is incomprehensible.

It is also not clear whether the Probate and Estate Planning or the Family Law Sections were consulted in the drafting of the bills.