

To: Real Property Law Section Council
From: Lorri King
Date: September 18, 2018
Re: Real Property Law Section Legislative Report

GENERAL LEGISLATIVE BACKGROUND

The Legislature returned for two days this September for a brief session that included adopting two ballot initiatives to take control of them before they went on the ballot. Those include the Minimum Wage initiative and Paid sick time. The expected next action is to amend the initiatives in lame duck session after the elections in November. In the middle of this abbreviated session week, the U.S. Supreme Court ruled to ban straight-ticket voting.

There was a flurry of activity on real property bills in September, including hearings on electronic notary and a bill on Premises liability/open and obvious law, all included in the report below.

LEGISLATION SIGNED INTO LAW SINCE LAST REPORT

Service of Process	PA 261	Sen. Jones	Modifies fees and mileage allowed for service of process.
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LEGISLATION OF INTEREST

SENATE BILLS

Affordable Rental Housing – SB 110 (Sen. Schmidt). Allow local units of government to provide incentives for affordable rental housing. The Home Builders Association is working with MML and the sponsor for compromise language. *Referred to Local Government Committee. There was a hearing on this bill in December 2017 to adopt a substitute for the bill that tightens up current language to replace mandatory language with voluntary. There was also a workgroup in March to air opposition. Passed Senate, referred to House Local Government.*

Housing Tax Credit – SB 184 (Sen. Gregory). Establishes credit for the purchase of certain housing and for certain home modifications. *Passed Senate, referred to House Tax Policy.*

Service of Process – SB 224 - 225 (Sen. Jones). Increases service of process fees and amends cross-reference to reflect amendment of provisions relating to fees for service of process. *Referred to Senate Judiciary.*

Tax Foreclosure – SB 386 (Sen. Emmons) Modifies grounds to invalidate tax foreclosure. Permits a person claiming an interest in property foreclosed to seek to invalidate the foreclosure so long as the property has not been transferred to a person other than the foreclosing governmental unit. *Passed Senate, referred to House Tax Policy.*

Land Banks - SB 422 (Sen. Conyers) Creates land bank housing program for certain veterans. *Referred to Senate Local Government.*

Property Conveyance – SB 449 (Sen. Hertel, C.) Provides for transfer of certain state -owned property in Ingham County. *Reported from Senate Government Operations, reassigned to Government Operations.*

Liens – SB 465 (Sen. Booher) Allows architects, engineers and surveyors to have a construction lien for unpaid professional services on recording a notice. The lien has priority from the date of recording (rather than from the date of first actual physical improvement for other construction liens). This was referred to the Construction Committee for input. Laura McMahon Lynch previously provided an assessment. **Input from council is needed on whether to take action on this bill.** *Passed Senate, referred to House Financial Services- one hearing in September.*

Brownfield Authorities – SB 468 (Sen. Stamas) Modifies population threshold for Brownfield redevelopment authorities. *Referred to Senate Economic Development and International Investment.*

Home Buyer Program – SB 511-512 (Sen. MacGregor and Sen. Horn) Makes changes to the first-time home buyers program and allows for tax incentives for contributions made to the first-time homebuyers program. *Passed Senate, referred to House Tax Policy, 2nd reading.*

Abandoned Real Property Conservatorship – SB 514 (Sen. Young) Would provide for court-appointed conservators to deal with blighted property. I have referred this to Residential Transactions and to Title and Conveyancing for review and comment. We do not have a response yet. *Referred to Senate Local Government.*

Agricultural Mediation Program – SB 516 – SB 518 (Sen. Schmidt) Provides for mediation of the enforcement of indebtedness against agricultural property. *Referred to House Banking and Financial Institutions.*

Transfer of Ownership – SB 540 (Sen. Schuitmaker) Makes changes to the definitions of transfer of ownership of property as it related to uncapping an assessed value and makes modifications to certain excluded transfers. Addresses certain interfamily trust conveyances, cumulative transfers of interest in entities sharing more than 50% interest with the transferor, interfamily entity transfers and

termination of life estates with remainder to defined family members. *Referred to Senate Local Government.*

Foreclosure Fees – SB 635 (Sen. Gregory) Changes the Revised Judicature Act of 1961 to provide a cap on the fee assessed by foreclosure sale purchasers. *Referred to Senate Banking and Financial Institutions, reported out of with substitute that moves the cap to \$200. Referred to House Financial Services.*

Electronic Document Notarization – SB 664 (Sen. MacGregor) Updates Michigan Notary Public Act language relating to electronic notarization of documents. *Passed Senate, referred to House Financial Services- one hearing in September and work group.*

Tenant and Landlord Sanctions – SB 667 (Sen. Hertel, C.) Creates a prohibition for local governments from penalizing or sanctioning tenants, occupants or landlords of rental units for contact made for police or emergency assistance in certain situations. *Referred to Senate Local Government.*

Marketable Title Act amendment – SB 671 (Sen. Jones) Adds language to statute relating to preserving claims against title. Includes restrictions as matter that will expire absent recorded documentation preserving its existence. *Passed Senate, referred to House Local Government. The RPLS has a posted public policy position opposing SB 671.*

Stormwater Assessment – SB 756 (Sen. Knollenberg). A bill to create the stormwater utility act to allow a local unit of government to establish a stormwater management utility if the local unit adopted a stormwater management plan and a stormwater utility ordinance and other specific functions of a stormwater utility ordinance. *Referred to Senate Natural Resources with one hearing in May.*

Elderly Disabled Housing Exemption – SB 808 (Sen. Ananich) Modifies law relating to housing exemptions for elderly or disabled families. *Referred to Senate Finance.*

Tenancy by the Entirety – SB 905 (Sen. Jones) Allows trust property to be treated as property tenants by the entirety in certain circumstances. *Referred to Senate Judiciary.*

Condominium Association Documents – SB 914 (Sen. Robertson) Modifies the condominium Act to provide for the inspection and electronic transmission of condominium association documents. *Referred to Senate Local Government.*

Property Tax – SB 976 (Sen. Gregory) Provides for a property subject to a local road funding special assessment a temporary exemption for a general ad valorem local road funding tax. *Referred to Senate Finance.*

Notaries – SB 996-999 (Sen. Schmidt, Sen. MacGregor, Sen. Hertel, C) Authorizes in state notary statute the recognition of acts performed outside of the state. Revises authentication process for notarial acts performed outside of the state. Repeals the Uniform Recognition of Acknowledgements Act. Modifies requirements for the recording of electronic documents. *Passed Senate, referred to*

House Financial Services.

Premises Liability Act – SB 1017 (Sen. MacGregor) Codifies the liability of possessors of real property for injuries to invitees and licensees. *Reported from Senate Judiciary committee.*

Property Tax Exemption – SB 1031 (Sen. Proos) Provides for a property tax exemption for utility personal property. *Reported from Senate Finance.*

Forest Property – SB 1034 (Sen. Booher) Modifies language relating to property tax exemption for qualified forest property. *Reported from Senate Natural Resources.*

Sportsmen Clubs – SB 1035 (Sen. MacGregor) Provides for a property tax exemption to apply to real property of a sportsmen club that dedicates its facilities for charitable purposes for a certain period of time each tax year. *Referred to Senate Finance.*

Homestead Tax – SB 1042 (Sen. Hansen) Provides for homestead property tax credits for disabled veterans and repeals a property tax exemption. *Referred to Senate Finance.*

Estates – SB 1058 (Sen. Emmons) Updates references to the estates and protected individuals code in the Public Health Code. *Referred to Senate Families, Seniors and Human Services.*

Notice of Foreclosure – SB 1102 (Sen. Jones) Revises the Notice of Foreclosure by Advertisement statute to require notice of foreclosure to include information to mortgagor contained in other regulations.

House Bills

Legal Notices - HB 4002 (Rep. VerHeulen) Revises publication of legal notices and creates the Local Government Public Notice Act. *Referred to House Local Government.*

Condominium Mediation – HB 4015 (Rep. Lucido). Requires a majority of co- owners of a condominium to approve the annual budget under a new Section 70. It also amends MCL 559.207 to authorize the administrator to investigate and seek to resolve disputes related to an association's failure to comply with the condominium documents. Finally, it provides for repeal of MCL 559.239 (which prohibits a co-owner from asserting as a defense to non-payment of assessments that the association has not provided services or management to the co-owner). RPLS has a posted public policy position opposing HB 4015. *Referred to House Local Government.*

Taking - HB 4070 (Rep. Kesto) Expands requirement that state agencies evaluate government actions that may result in takings to include Department of Agriculture and Rural Development and require agency that fails to review takings assessment to pay court costs and attorneys' fees. Under this bill the DEQ, DNR and DOT must weigh the action under consideration against a set of "takings

Assessment Guidelines”, prepared by the state Attorney General, to determine if their action is a taking. *Passed House, referred to committee of the whole.*

Property Tax - HB 4104 (Rep. Wentworth) Provides for requirement to issue a receipt to disabled veteran filing an affidavit for exemption of property taxes. *Referred to House Tax Policy.*

Property Tax Exemptions - HB 4139 (Rep. Chirkun) Modifies criteria to qualify for property tax exemptions. *Referred to House Tax Policy.*

Asset Forfeiture - HB 4158 (Rep. Lucido) Requires a criminal conviction before proceeding. *Passed House, referred to Senate Judiciary.*

Disabled Veteran Exemption – HB 4165 (Rep. Iden) Modified affidavit filing requirements for disabled veteran exemption. *Referred to House Tax Policy.*

Land Use – HB 4266 (Rep. Kelly). Authorizes household agriculture in residential zones. *Referred to House Agriculture.*

Attorneys - HB 4312 (Rep. LaFave) Modifies eligibility requirements for attorneys licensed in another state to practice law in Michigan. *Reported from Judiciary, 3rd reading in House.*

Assessment Districts – HB 4359 (Rep. Lucido). Allows townships to create special assessment districts for private utility services. *Referred to House Local Government.*

Property Tax Exemption – HB 4362 (Rep. Yaroch). Holds local units harmless for disabled veteran exemption. *Referred to House Tax Policy.*

Property Assessments – HB 4397 (Rep. Maturen). Requires certain tribunal determinations in assessment disputes as to the valuation of property. This is the dark store bill reintroduced. *Referred to House Tax Policy.*

Housing Authority – HB 4434 (Rep. Neeley) Provides for requirement to offer vacant apartment to mobility-impaired tenants. *Referred to House Local Government.*

Condominiums – HB 4446 (Rep. Kesto). Authorizes legal actions on behalf of co-owners of a condominium association, and prohibits condominium documents from restricting the power of condominium association boards from engaging in certain legal actions. *Referred to House Judiciary.*

Rent Control – HB 4456 (Rep. Chang). Repeals MCL 123.411, which prohibits a local governmental unit from enacting or enforcing rent controls for leasing of private residential property. *Referred to House Local Government.*

Evictions - HB 4463 (Rep. VanSingel) Allows limited liability company members and others with personal knowledge to represent in certain circumstances. Rep. VanSingel amended his bill to only allow a member of a 2 person LLC or husband and wife or single person LLC, who is not an attorney, to represent the entity in a summary proceeding to regain possession of premises or obtain a money judgment, under certain conditions. The RPLS has a posted public policy position opposing HB 4463. *Passed House, referred to Senate Judiciary. One hearing in Senate Judiciary.*

Property Tax Exemptions - HB 4484 (Rep. Elder) Modifies exemption for surviving spouse of disabled veteran. *Referred to House Tax Policy.*

Short Term Rental - HB 4503 (Rep. Sheppard) **SB 329** (Sen. Hune). Limits regulations from local zoning for vacation and short-term rentals. *Referred to House Tourism and Outdoor Recreation. SB 329 referred to Senate Local Government.*

Property Tax Dates - HB 4634 (Rep. Phelps) Modifies certain property tax collection dates. *Referred to House Tax Policy.*

Service of Process - HB 4666 (Rep. Runestad) Amends provisions relating to service of process including increased fees, modified fees and mileage allowed and cross reference to reflect amendment of provisions relating to fees for service of process. *Passed House, referred to committee of the whole.*

Rent Control - HB 4686 - 4687 (Rep. Chang) Authorizes local units of government to impose rent limitations for senior citizens and individuals with disabilities and provides for tax exemptions and specific tax. Creates exception in rental control prohibition. *Referred to House Local Government.*

Cohabitation - HB 4688 (Rep. Chang) Repeals prohibition on lewd and lascivious cohabitation. *Referred to House Judiciary.*

Limited Liability Company - HB 4701 (Rep. Hughes) Waives certain fees under Michigan limited liability company act for certain veterans. *Passed House, referred to Senate Veterans, Military Affairs and Homeland Security.*

Housing - HB 4719 (Rep. Iden) Provides for allocation of responsibilities with respect to prevention and management of bedbug infestation. *Referred to House Law and Justice.*

Courts - HB 4754 (Rep. Barrett) Authorizes inter-circuit concurrent jurisdiction plan. *Referred to House Judiciary.*

Brownfield Development - HB 4773 (Rep. Afendoulis) Modifies certain population thresholds for brownfield redevelopment authorities. *Referred to House Tax Policy.*

Legal Material - HB 4779 (Rep. Kosowski) Provides for uniform electronic legal material. *Passed House, referred to Government Operations.*

House Development Authority – HB 4830 (Rep. Reilly) Requires United States citizenship or permanent resident status. *Referred to House Appropriations.*

Income Tax – HB 4844 (Rep. Iden) Removes eligibility based on homestead taxable value cap. *Referred to House Tax Policy.*

Rental Notices – HB 4847 (Rep. Lucido) Provides for notice in adjustments of rent. *Referred to House Local Government.*

Property Tax Credit Cap – HB 4857 (Rep. Tedder) Begins inflation adjustment of cap on the Homestead Property Tax Credit in 2019 instead of 2021. *Referred to House Tax Policy.*

Housing Discrimination – HB 4872 (Rep. Byrd) Prohibits housing discrimination relating to military status. *Referred to House Military and Veterans Affairs.*

Mortgages – HB 4875 (Rep. Sabo) Prescribes time period for veterans for acceleration of debt in mortgage foreclosure. *Referred to House Military and Veterans Affairs.*

Homestead Property Tax Credit – HB 4883 (Rep. Lucido) Begins inflation adjustment of cap on Homestead Property Tax Credit in 2019 instead of 2021. *Referred to House Tax Policy.*

Vulnerable Adults – HB 4885 (Rep. Lucido) Increases penalties for stealing, embezzling or converting personal or real property from a vulnerable adult. *Referred to House Families, Children and Seniors.*

Late Penalties– HB 4916 – HB 4917 (Rep. Howrylak) Modifies late filing penalty for late reports for LLC's and business corporations. *Passed House, referred to Senate Commerce.*

Property Tax Exemption – HB 4932 (Rep. Kosowski) Raises income threshold for poverty exemption for disabled and elderly persons. *Referred to House Tax Policy.*

Property Tax – HB 4949 (Rep. Yaroach) Modifies conditions for acceleration of winter property taxes. *Referred to House Tax Policy.*

Property Tax Exemption – HB 4961 (Rep. Sowerby) Modifies homestead exemption for disabled veterans and surviving spouses. *Referred to House Tax Policy.*

Land Use – HB 4968 (Rep. Glenn) Requires planning commissions and zoning boards of appeals to abstain from voting on financial issues or contracts when a conflict of interest exists. *Referred to House Energy Policy.*

Property Tax Exemptions – HB 4985 - 4986 (Rep. Maturen) Revises procedure for property tax

exemption for disabled veterans. Eliminates disqualifiers and limitations on property tax credit for disabled veterans and repeals disabled veterans property tax exemption. *Referred to House Tax Policy.*

Rental Property – HB 5005 - 5008 (Rep. Sheppard, Rep. Kesto, Rep. Iden, Rep. Hoitenga) Requires lost income from rental property made uninhabitable by; larceny at part of restitution, unfit for intended purpose by larceny, and provides restitution for theft of appliances from rental property. *Referred to House Law and Justice.*

Tax Increment Financing – HB 5070 (Rep. Frederick) Provides for tax increment finance authorities into a single act. *Referred to House Local Government.*

Property Tax – HB 5160 (Rep. Byrd) Revises property tax exemption. *Referred to House Tax Policy.*

Delinquent Taxes – HB 5195 (Rep. Chang) Excludes unpaid water bills from items included in delinquent taxes. *Referred to House Tax Policy.*

Homestead Property Tax – HB 5197 (Rep. Howrylak) Provides for a phase-out of credit based on taxable value of property. *Referred to House Tax Policy.*

Landlords and Tenants – HB 5221 (Rep. Graves) Authorizes late fees to be awarded in summary action for possession of premises. *Referred to House Judiciary.*

Voter Registration Information – HB 5266 (Rep. Camilleri) Requires landlords to provide new tenants with certain voter registration information. *Referred to House Elections and Ethics.*

Financial Education – HB 5273 (Rep. Moss) Requires K-12 curriculum on taxation and on ownership or leasing of vehicles and residential property. *Referred to House Education Reform.*

Obsolete Property – HB 5279 (Rep. Yarocho) Modifies criteria for obsolete property and rehabilitation credit. *Referred to House Tax Policy.*

Licensed Contractors – HB 5295 (Rep. Brann) Requires licensed contractor to provide certain documents when recording claim of lien. *Referred to House Regulatory Reform.*

Land Contracts – HB 5363-5366 (Rep. Schor) Prohibits certain terms in land contract conditions and prohibits certain mortgages by vendors. Requires recording of land contract certificate for certain residential premises. Provides for the recording of land contract certificates. Makes transfer of title in a foreclosure subject to prior land contract if land contract certificate was recorded. *Referred to House Financial Services. Will Moseng has been involved in drafting and workgroups in the Senate on these bills.*

Building Codes – HB 5376 (Rep. Iden) Creates advisory committee for certain building codes. *Passed House, referred to Senate committee to be named later.*

Premises Recovery – HB 5396 (Rep. Lucido) Modifies proceedings to recover possession of premises because of assault, battery or unlawful drugs to require conviction. *Referred to House Law and Justice.*

Trusts – HB 5398 (Rep. Lucido) Allows the use of a certificate of trust under the estates and protected individuals code for a trust that affects real property. *Referred to House Judiciary. Section voted at January 2018 Council meeting to oppose if changes were not made to bill. No changes made to date.*

Public Records – HB 5412-5413 (Rep. Iden, Rep. Johnson, S.) Clarify scope of nonpayer physical media fee for public records. Allows publication by electronic means. *Passed House, referred to Senate Oversight.*

Property Conveyances – HB 5415 (Rep. Yarocho) Requires both spouses to consent to conveyance of marital residence. *Referred to House Judiciary.*

Estate Tax – HB 5443 (Rep. Johnson, S.) Repeals estate tax. *Referred to House Tax Policy.*

Property Tax – HB 5453 (Rep. Greig) Provides for temporary exemption from a general ad valorem local road funding tax for properties subject to a local road funding special assessment. *Referred to House Transportation and Infrastructure.*

Tax Tribunal Reform – HB 4412 (Rep. Iden) An effort to bring more effective service to the Tax Tribunal. The bill calls for increased compensation and training. *Passed House, referred to Senate Finance.*

Paint Inspections – HB 5388 (Rep. Gay-Dagnogo) Would create a subset of new inspection duties for landlords relative to lead-based paint. This includes escrowing rent/funds for lead abatement. *Referred to House Judiciary.*

Principal Residence – HB 5454 (Rep. Lucido) Extends principal residence exemption to owners temporarily absent while rebuilding a demolished or destroyed dwelling. Substitute changed the bill to remove the word “demolition” and only apply the credit for destruction. *Passed House, referred to Senate Finance.*

Veteran Property Tax – HB 5455 (Rep. Theis) Allows exemption for spouse of veterans. *Referred to House Military and Veterans Affairs.*

Housing – HB 5485 (Rep. Hammoud) Includes requirement to provide access to recycling services for renters. *Referred to House Local Government.*

Property Transfer – HB 5546 (Rep. Inman) Allows transfer of ownership from a general or limited partnership to certain individuals to be exempt from uncapping taxes after transfer. *Referred to House Tax Policy.*

Delinquent Taxes – HB 5710 (Rep. Chang) Creates sanctions for landlord’s delinquent on property

taxes. *Referred to House Local Government.*

Land Use – HB 5717 (Rep. Chatfield) Clarifies regulation of land by district must be accomplished through zoning ordinance. *Referred to House Regulatory Reform.*

Malicious Destruction – HB 5746 (Rep. Farrington) Modifies provision related to malicious destruction of property to include real property. *Referred to House Law and Justice.*

Property Tax Exemption – HB 5758-5759 (Rep. Lucido) Modifies property tax exemptions for disabled veterans. Provides for specific tax on certain homesteads of disabled veterans and their surviving spouses. *Referred to House Tax Policy.*

Public Property – HB 5764 (Rep. Dianda) Modifies provision related to contracts or agreements for the purchase of real or personal property for public use. *Referred to House Transportation and Infrastructure.*

Asset Forfeiture – HB 5779 (Rep. Lucido) Requires a criminal conviction before proceeding on forfeiting or selling property in nuisance cases. *Referred to House Judiciary.*

Property Tax – HB 5801 (Rep. Crawford) Modifies content of notice of an election for a proposed increase in the total tax rate limitation. *Referred to House Tax Policy.*

Land Division – HB 5802 (Rep. Lower) Requires tax payment certification prior to approval of land division. *Referred to House Tax Policy.*

Lake Assessment Fees – HB 5889 (Rep. VanSingel) Provides for lake level assessment fee reimbursement under certain circumstances. *Passed House, referred to Senate Natural Resources.*

Drinking Water – HB 5898 (Rep. Inman) Establishes annual fee schedules for community supply providers. *Referred to House Appropriations.*

Income Tax Credit – HB 6035 (Rep. Camilleri) Provides for credit for certain renovations made to a principal residence for a senior citizen or person with disabilities. *Referred to House Tax Policy.*

Real Estate Broker – HB 6044 (Rep. Hoitenga) Modifies certain licensure requirements for employees or agents of a real estate broker hired to perform duties relating to property management. *Referred to House Regulatory Reform.*

County Departments – HB 6049 (Rep. Lower) Provides for shift of certain assessment functions to county equalization departments. *Referred to House Tax Policy.*

Evictions – HB 6070 (Rep. Lucido) Allows writ of restitution to be executed by a court officer bailiff or deputy sheriff. *Referred to House Judiciary.*

City Land Sales – HB 6093 (Rep. Howrylak) Requires voter approval for a city to sell five or more acres of city-owned land. *Referred to House Local Government.*

Evictions – HB 6096 (Rep. Lucido) Process entry by owner to evict. *Referred to House Judiciary.*

Occupational Licenses – HB 6110 (Rep. Iden) Restricts use of criminal record to determine eligibility for occupational licensing. *Referred to House Regulatory Reform.*

Affordable Housing – HB 6180-6181 (Rep. Chang) Requires local ordinances use certain factors in calculating area median income. Requires Michigan State Housing Development Authority to create best practices guidelines for older adults displaced by residential revitalization projects. *Referred to House Local Government.*

Energy-Saving Home Improvements – HB 6304 (Rep. Neeley) Invalidates provisions in certain homeowners' association agreements requiring association approval for the installation or operation of energy-saving or energy-generating improvements; and to prohibit local units of government from requiring such homeowners' association approval. *Referred to House Energy Policy.*

LEGISLATION EXPECTED TO BE INTRODUCED THIS SESSION

Assignment of Rents Amendment – In light of *Town Center Flats, L.L.C. v ECP Commercial II LLC*, 855 F3d 721 (6th Cir 2017), the Debtor/Creditor Rights Committee of the Business Law Section concluded that the statute should be amended to include, among other things, to prevent the enforcement of an assignment of rents from being deemed a preferential transfer, require the assignment of rents to be released upon satisfaction of the underlying debt, and providing for the application of the assigned rents and some accounting by the assignee of their use. The Committee reached out to RPLS for possible assistance in the effort. Rachel Foster of Varum Riddering and the Commercial Development and Finance Committee, has agreed to coordinate with the Committee to explore what role we may wish to play. The group involved in drafting has not started yet, but sense a need for representation by the real property practitioner's bar. Once that Committee has completed its work, they will reach out for approval from the Business Law Council and hopefully RPLS to support and advocate the legislation with legislators.