

MEMORANDUM

TO: Real Property Law Section Council

FROM: Mike Luberto

DATE: October 4, 2022

SUBJECT: Legislative Committee Report

1. **Monthly Call.** The ad hoc Legislative Committee met via conference call Monday, October 3, 2022, to discuss recent legislation.
2. **Current status.** We did not have the benefit of a call with Tabitha Zimney from Karoub & Associates until Tuesday, October 4, 2022 at 10:30 a.m. Thanks to Dawn for reporting that the House session dates were September 27 & 28. The House is not in session again until 10-11-22 per the posted calendar. The Senate session dates were September 28 & 29. The Senate is not in session again until 10-11-22 per the posted calendar.
3. **Legislation of interest.**
 - a. **MRTA**
House Bill 6370 introduced 9-8-22, Passed the House 9-28-22!
<http://legislature.mi.gov/doc.aspx?2022-HB-6370>

This bill would amend the Marketable Record Title Act (MRTA) to provide that the Act must not be applied to bar or extinguish certain kinds of easements or use restrictions. Specifically, it would further describe the bar of the application of MRTA by adding the following language in italics. The amendment adds that the easement that cannot be barred or extinguished due to a failure to file the notice must be for the *operation, construction, maintenance, improvement, removal, replacement, or protection* of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of the facility is observable. It further removes certain easements, observable or not, that are for either (1) flowage rights for an impoundment that exists as part of a federally licensed hydroelectric facility and (2) the management of vegetation within the easement from the application of MRTA. Of key importance to real estate practitioners, the amendment further provides that MRTA may not be applied to extinguish any land and resource use restrictions, including by not limited to restrictive covenants, easements, conservation easements or any other recorded instrument that protects public health, safety, welfare, or the environment.

The Section has modifications and clarifying provisions that it has sought to add to the MRTA. Unfortunately, these concerns are not addressed by or consistent with House Bill 6370. The Section has been working diligently with our lobbyist and it is anticipated that another MRTA related bill will be introduced soon. **HB 6370 does not seem consistent with our objectives.**

- b. **SB 1148 Probate: powers of attorney; uniform power of attorney act.** Creates new act & repeals secs. 5501 - 5505 of 1998 PA 386 (MCL 700.5501 - 700.5505).
<http://legislature.mi.gov/doc.aspx?2022-SB-1148>

c. SB 1150 Probate: powers of attorney; reference to powers of attorney in natural resources and environmental protection act; revise to reflect adoption of uniform power of attorney act. Amends sec. 20101b of 1994 PA 451 (MCL 324.20101b). Incorporates Uniform Power of Attorney Act into Natural Resources and Environmental Protection Act. <http://legislature.mi.gov/doc.aspx?2022-SB-1150>

4. **New Proposed Legislation.** We did not receive a Report of Introduced Legislation from Karoub since our last meeting. But the Legislation Committee did a great job of discovering newly-introduced legislation.

- a. SB 1141 Individual income tax: property tax credit; community land trust homestead tax credit; provide for. Amends sec. 504 of 1967 PA 281 (MCL 206.504) & adds sec. 518. TIE BAR WITH: SB 1142'22. Modifies sections of Income Tax Act addressing Community Land Trusts. <http://legislature.mi.gov/doc.aspx?2022-SB-1141>
- b. SB 1142 Property tax: payment and collection; application of a certain income tax credit toward payment of property taxes levied on certain community land trust property; provide for. Amends 1893 PA 206 (MCL 211.1 - 211.155) by adding sec. 7yy. Modifies General Property Tax Act with procedure related to land owned by Community Land Trust. <http://legislature.mi.gov/doc.aspx?2022-SB-1142>
- c. SB 1144 Housing: housing development authority; standard form describing the reasonable accommodations to be provided during elevator shut down; require the authority to create. Amends 1966 PA 346 (MCL 125.1401 - 125.1499c) by adding sec. 22e. Requires creation of standard form for landlords to provide tenants regarding reasonable accommodations for nonfunctioning elevators. <http://legislature.mi.gov/doc.aspx?2022-SB-1144>
- d. SB 1145 Housing: other; landlords to provide reasonable accommodations during elevator shutdown; require. Creates new act regarding reasonable accommodations that landlords must provide to tenants in case of nonfunctioning elevators. <http://legislature.mi.gov/doc.aspx?2022-SB-1145>
- e. SB 1146 Environmental protection: permits; permit for air emissions near dwellings and other specified uses; require permittee to install vegetative buffer and to offer to purchase the dwellings. Amends 1994 PA 451 (MCL 324.101 - 324.90106) by adding sec. 5506b. <http://legislature.mi.gov/doc.aspx?2022-SB-1146>
- f. SB 1147 Property tax: delinquent taxes; provisions regarding collection and distribution of certain fees added to delinquent taxes; amend. Amends secs. 78a & 78g of 1893 PA 206 (MCL 211.78a & 211.78g). Provides that treasurer may add additional fees to amount required to pay off delinquent taxes. <http://legislature.mi.gov/doc.aspx?2022-SB-1147>
- g. SB 1152 Economic development: brownfield redevelopment authority; tax increment financing recapture for housing assistance; provide for. Amends title & secs. 2, 8, 13, 13b, 13c, 14, 14a, 15 & 16 of 1996 PA 381 (MCL 125.2652 et seq.). Amends Brownfield redevelopment financing act. <http://legislature.mi.gov/doc.aspx?2022-SB-1152>
- h. SB 1155 Property tax: other; reference to the brownfield redevelopment financing act; update. Amends sec. 7gg of 1893 PA 206 (MCL 211.7gg). Incorporates MCL 124.751 to 124.774 in the General Tax Act. <http://legislature.mi.gov/doc.aspx?2022-SB-1155>

- i. [HB 6388 of 2022](http://legislature.mi.gov/doc.aspx?2022-HB-6388) Environmental protection: permits; challenge to permit decision made by the department of environment, Great Lakes, and energy; prohibit. HB 6402 of 2022. <http://legislature.mi.gov/doc.aspx?2022-HB-6388>
- j. [HB 6402 of 2022](http://legislature.mi.gov/doc.aspx?2022-HB-6402) Property tax: exemptions; exemption for disabled veterans; modify. Amends sec. 7b of 1893 PA 206 (MCL 211.7b).
- k. [HB 6417 of 2022](http://legislature.mi.gov/doc.aspx?2022-HB-6417) Cities: home rule; penalties for certain blight offenders; increase. Amends sec. 4q of 1909 PA 279 (MCL 117.4q).
- l. [SB 1169 of 2022](http://legislature.mi.gov/doc.aspx?2022-SB-1169) Environmental protection: underground storage tanks; placement distance of underground storage tanks from a public water supply system; revise. Amends sec. 21102a of 1994 PA 451 (MCL 324.21102a) & adds sec. 21102b.
- m. <http://legislature.mi.gov/doc.aspx?2022-SB-1185> SB 1185 was introduced 9-28-22 and applies to Landlord-Tenant issues and rental agreements. It amends 1972 PA 348 and modifies provisions relating to the inventory check list, notices and the security deposit. Proposed revised Section 7 provides that a security deposit may be used only for (a) reimbursing the landlord for damages, (b) paying utility bills, (c) paying accrued rent, (d) paying rent due for premature termination of the rental agreement by the tenant and (e) paying other claims.
- n. <http://legislature.mi.gov/doc.aspx?2022-SB-1133> SB 1133 was introduced on 6-30-22 and passed the Senate on 9-28-22. This bill would amend the Revised Judicature Act to extend, by 20 years, the \$4 fee for recording an instrument with the county register of deeds. Otherwise on 1-1-2023, it reverts to \$2.
- o. <http://legislature.mi.gov/doc.aspx?2021-HB-4730> House Bill 4730 (Substitute S-2 as reported) The bill would amend Public Act 161 of 1895, which requires county treasurers to provide transcripts and records upon request and prescribes the associated fees, to increase the maximum charge per parcel record, from \$0.25 to \$0.30, with a cap of \$2,000 instead of \$1,500. Passed both chambers on 9/28/2022. Not yet assigned a Public Act number.
- p. <http://legislature.mi.gov/doc.aspx?2021-HB-4575> HB 4575 House Bill 4575 was introduced 3-24-21 and a Substitute Bill passed both chambers on 9-28-22. This bill would amend the Stille-DeRossett-Hale Single State Construction Code Act to prohibit a local unit of government, notwithstanding any provision of law to the contrary, from adopting, maintaining, or enforcing an ordinance that prohibits the use of an appliance that uses gas in a new or existing residential or commercial building or structure. MCL 125.1513 **Not yet assigned a Public Act number.**
- q. <http://legislature.mi.gov/doc.aspx?2022-HB-6193> HB 6193 passed both houses. 9-28-22 passed the Senate. The bill would amend the Housing Law of Michigan to modify the circumstances in which the occupants of a dwelling may be ordered by a public official to vacate it. Not yet assigned a Public Act number.

5. Bills of Interest.

- **Remote Notarization legislation:**

- HB 5759 was introduced on February 16, 2022.

The Board of Commissioners for the State Bar of Michigan decided to support this legislation. The SBM Bylaws provide that: “A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by

a majority vote of the Board of Directors or Representative Assembly.” Article VIII, Section 7(2). Accordingly, we may not take a contrary position. We did submit our comments timely to the State Bar with respect to drafting concerns. Tabitha also gave a copy of our comments to the sponsor of the legislation. They are not expecting this legislation to move prior to the end of the spring session.

- **Short-Term Rental related:**

HB 4722, [2021-HEBH-4722.pdf \(mi.gov\)](http://legislature.mi.gov/doc.aspx?2021-HB-4722) (<http://legislature.mi.gov/doc.aspx?2021-HB-4722>) This is also known as the “Realtor Bill”. It is the “ban on the ban” bill. Linked is the substitute version that was passed by the House on 10-27-21 (at 2 am, I believe).

- HB 5605 (12/8/21) Taxation: excise taxes; excise tax on business of providing accommodations to include certain short-term rentals; modify. Creates new act. <http://legislature.mi.gov/doc.aspx?2021-HB-5605>
- SB 880, Creates short-term rental regulation act. Tie Bar with HB 4722.
 - Drafting of substitute bill is in progress. Tabitha will send us the substitute bill once its finalized.
 - <http://legislature.mi.gov/doc.aspx?2022-SB-0880>
 - SB 880 and HB 5605 will likely be close to identical after revisions.

6. **Potential Future Action.**

- **Prior Tax Foreclosure Amendments (issue with MCL §781(1)** – the Section’s lobbyist is working to assist us in trying to fix the problem the Section previously identified with this legislation [see November 2020 Legislative Report].

7. **Pending Legislation; Positions**

- **Construction Lien Act Amendment** – HB 4668

<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4668.pdf>

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

- **Prohibited Restrictive Covenants Act** – HB 4416

(<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4416.pdf>)

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

According to Tabitha, Representative Anthony is trying to move this legislation. David Pierson has had discussions with the primary sponsor of the bill, Rep Anthony. Some of our requested changes were made. David will be making some comments on their proposed discharge form.

- **SB 1020** (established for contractors to pay subcontractors and suppliers in a timely manner). At its last meeting, the RPLS Council passed a resolution opposing this legislation.
- **HB 6343** – Proposes some cleanup and exempts from uncapping of taxable value upon transfer to sons-in-law and daughters-in-law. At its last meeting, the RPLS Council passed a resolution supporting this legislation. <http://legislature.mi.gov/doc.aspx?2022-HB-6343>
- **SB 1082** Property Tax McBroom Amends process for appealing certain assessment-related disputes as to certain property. To amend 1893 PA 206 by amending section 34 (MCL 211.34), as amended

by 1986 PA 105, and by adding sections 34f and 34g. The RPLS Council voted to oppose this legislation at its last meeting.

8. **Additional matters.**

- Land Contract Reform Initiative – On June 20, 2022, David Pierson and Dawn Patterson were invited to a call with Samuel Buchalter of MSHDA to discuss his concerns regarding the initiative. He would like to have RPLS approve his proposed draft before it is introduced. David Pierson shared our comments. Mr. Buchalter agreed that clarification will be added that this intended legislation will not apply to commercial real estate.
- MSHDA Missing Middle Housing Program introduced. \$50 million in funding. Please see the report submitted at the July 2022 Council meeting for further information.