

REAL PROPERTY LAW SECTION LEGISLATIVE REPORT

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GENERAL LEGISLATIVE BACKGROUND

The Legislature will break for two weeks starting November 13th through November 27th. They will return for three weeks of session before breaking for Christmas, leaving 9 days of session left after this week.

The short term rental issue has taken pause with no committee meeting being held in October due to ongoing discussions of interest groups involved. The House defeated a bill making reforms and rate scalebacks for auto insurance. Senator Bieda and Representative, now Lansing Mayor-elect Schor have been present at additional discussions on land contracts. There has been no resolution yet, but continued discussions with the Michigan poverty law group to address the problem of unlicensed land contract practitioners and unlicensed rentals. Tabitha does not see any legislative action for the remainder of 2017.

LEGISLATION SIGNED INTO LAW SINCE LAST REPORT

Property Tax Exemption	PA 121, 122	Rep. Pagel, Rep. LaSata	Clarifies procedures for rescinding a principal property tax exemption in another state while claiming a similar exemption in Michigan. Prohibits obtaining or attempting to obtain a principal residence exemption on property in this state while claiming a substantially similar exemption on property in another state.
Principal Residence Exemption	PA 206	Rep. Leutheuser	
Delinquent Taxes	PA 27	Rep. Tedder	Clarifies administration of delinquent tax revolving funds.
Transformational Brownfields	PA 46, 47, 48, 49,	Sen. Horn, Brandenburg, Casperson,	Captures and earmark certain sales tax revenue attributable to transformational brownfield plans.

Mortgaging Real Estate	PA 54	Rep. Whiteford	Removes requirement of statement of marital status of male grantor/mortgagor in instruments conveying or mortgaging real estate.
Real Estate Brokers	PA 56	Sen. Kowall	Revises requirements for continued education hours for real estate brokers and salespersons.
Neighborhood Enterprise Zones	PA 44	Rep. Leutheuser	Eliminates requirement to send report of assessed values and add valorem taxes to the Michigan enterprise zone authority.
Property Tax	PA 42	Sen. Hildenbrand	Modifies deadline date for delivery of combined document for personal property exemption.

Business Courts	PA 101	Sen. Jones	Revises types of cases heard by the business courts. Among other things, now excludes all land contract, mortgage, construction and condominium lien foreclosure matters (previously only excluded land contract or mortgage foreclosures involving residential property). Now includes actions against guarantors of commercial loans.
Land Use	PA 117	Sen. O'Brien	Addresses conflicts between certain plats. Specifies that a plat recorded under former PA 91 of 1839 would supersede an earlier plat to the extent there was a conflict or inconsistency regarding the dedication of a parcel for a court house in the earlier plat. According to testimony in the Senate, the bill aims to clarify which plat controls under unusual circumstances where the same tract of land has been platted more than once.

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.*

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 - 226 (Sen. Jones). Increases service of process fees and amends cross-reference to reflect amendment of provisions relating to fees for service of process. Additionally modifies fees and mileage allowed for service of process. *Referred to Senate Judiciary.*

Deed Statements – SB 342 (Sen. Proos) Clarifies references to the number of divisions transferred on deed statement and form providing notice of transfer of the right to make unallocated divisions. Statute currently requires that the deed state the number of divisions being transferred. The bill would permit the word “All” to be used instead of a number. *Passed Senate, 2nd reading in House Local Government.*

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.*

Tax Increment Finance – SB 393 (Sen. Horn) Consolidates all tax increment finance programs. *Referred to Senate Economic Development and International Investment.*

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.*

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. Attached to last meeting’s report is an email from Laura McMahon Lynch with her assessment. There is some sentiment from Laura (and other practitioners) for modifying the lien priority of all construction liens to start from the date of recording of the lien. Input from council is needed on whether to take action on this bill. *Referred to Banking and Financial Institutions.*

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. *Referred to Senate Finance.*

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.*

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.*

Records Package – SB 554-559 (Sen. Hansen and Sen. Schmidt) Amends several acts to outline when a county clerk may destroy copies of documents in recognition of the Michigan history Center Act, 2016 PA 470, MCL 399.811. *Referred to Senate Outdoor Recreation and Tourism.*

Property Taxes – SB 570 (Sen. Hildenbrand) Makes adjustments to the General Property Tax Act and Alternative Essential Services Assessment Act relating to exemptions and modifies deadline dates. Also related to plant rehabilitation districts and industrial development districts. *Referred to Senate Tax Policy.*

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.*

Property Taxes – SB 573 (Sen. Proos) Makes changes to deadline dates under the General Property Tax Act as it relates to plant rehabilitation districts and industrial development districts. *Passed Senate, Referred to House Tax Policy.*

Renaissance Zones – SB 623 (Sen. Horn) Provides for renewal or extension of certain renaissance zones. *Referred to Senate Finance.*

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.*

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). HB 4015 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 Senate Oversight Committee.*

Property Tax - HB 4104 (Rep. Wentworth) Provides for requirement to issue a receipt to disabled veteran filling 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. *Referred to House 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.*

Property Tax Liability - HB 4285 (Rep. Lucido). Clarifies personal liability for unpaid property taxes. Provides that a person is not personally liable for any unpaid property tax levied on real property unless than person owned the real estate on the tax day for the year in which the unpaid tax was levied. The intent of the bill is to prevent a prior owner (or owners) of property from being held personally responsible for property taxes on property that has been transferred to a subsequent owner who is responsible, but that transfer of ownership has gone unrecorded or been misreported. *Passed House, reported to Senate Finance.*

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.*

Wills and Estates – HB 4410 (Rep. Lucido). Allows descendants to exclude adult child by written instrument. *Reported from Judiciary, 2nd reading in House.*

Brownfield Tax Credit – HB 4420 (Rep. Tedder) Allows amendments to extend the duration of certain brownfield credits beyond 10 years. *Reported from Tax Policy, 3rd reading in House.*

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.*

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.*

Real Estate Transfer Tax - HB 4643 (Rep. Maturen) Expands exemption from real estate transfer tax for principle residences that lost value. Declining value exemption stating that if you are exempt from real estate transfer tax if your selling SEV is at or below the SEV the day you purchased your property. *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. *Referred to House Judiciary.*

Rent Control - HB 4686 (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. *Referred to House Local Government.*

Rent Control - HB 4687 (Rep. Chang) 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. *Referred to House Military and Veterans Affairs.*

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. *Referred to House Law and Justice.*

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

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.*

Economic Development – HB 4871 (Rep. Chang) Modifies qualifying period for assessment for a business improvement zone. *Referred to House Commerce and Trade.*

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.*

Property Tax – HB 4905 (Rep. Lucido) Modifies principal residence exemption for individual residing in nursing home or assisted living facility allowing prior residence for which exemption is claimed to be occupied although not leased. *Referred to House Tax Policy.*

Property Tax Exemption – HB 4932 (Rep. Kosowski) Raises income threshold for poverty exemption for disabled and elderly persons to at or below 175% of federal poverty guidelines. *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.*

Wills and Estates – HB 4821 (Rep. Runestad) - **4822** (Rep. Ellison) Requires appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding where no interested person applied or petitioned for appointment. Modifies powers and duties of public administrators acting as personal representatives including notice obligations given knowledge of pending tax foreclosure. *Passed House, referred to Senate Judiciary.*

Income Tax – HB 4844 (Rep. Iden) Removes eligibility for income tax credit based on homestead taxable value cap. *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. *Referred to House Commerce and Trade.*

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

Property Tax – HB 5160 (Rep. Byrd) Revises property tax exemption enabling three year look back. *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 as part of restitution, 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 and administration into a single act. *Referred to House Local Government.*

Property Tax – HB 5086 (Rep. Maturen) Modifies distribution of local community stabilization act share revenues. *Reported in House for 2nd reading.*

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.*

LEGISLATION EXPECTED TO BE INTRODUCED THIS SESSION

Land Contracts – Senator Bieda (D-Warren). Senator Bieda has worked with the Michigan Poverty Law Project to craft a four-bill draft package that would regulate land contracts. Among the many provisions listed in the drafts are mandatory certificate of occupancy issued, recording of all land contracts, mandatory title search, mandatory inspection, mandatory appraisal, specific provisions of a contract set forth in statute, and more. There was one work group held in September on the issue. The sponsor will be making dramatic changes to his proposal as many groups were very concerned with the extensive regulations the drafts imposed. We submitted these proposals to Will Moseng for review and discussion. He agreed with most of the attendees of the hearing that the legislation does not solve problems that aren't already solved by existing remedies which are available to the parties but not necessarily mandated. He is meeting with Representative Schor on a package of land contract bills on behalf of MSHDA. Absent a conflict of interest, he will also meet on behalf of RPLS.

Senator Bieda has removed the contract and other mandated activities from the bill drafts. The Senator has shared new language that would exempt any lease with option to buy or rental lease in

general. He would also require a mandatory title check for every land contract, along with mandatory recording of all land contracts. It would be advisable to meet with the Senator again to discuss the combination of MSHDA land contract bills with the bills that he had drafted previously.

Tenancy by the Entirety- Senator Jones (R- Grand Ledge). Senator's office awaiting comments from stakeholders before introduction. **Update from David Pierson:** The Probate & Estate Planning Section convinced Sen. Jones to consider sponsoring a bill to allow property to be held as tenants by the entirety even though it is held in trust. His staff convened a workgroup with the same organizations as were represented in the discussions of dower and tenants by the entirety for same sex marriage and tenants by the entirety for personal property: Probate Section, Real Property Law Section, Michigan Bankers Association, Family Law Section, Michigan Poverty Law Center, and an attorney for Chemical Bank who seems to stand in for all creditors.

The Probate Section's point is simply to allow protection from creditors while holding property in trust. Neither the Bankers nor the creditors representatives seem to object. In their view, the property could be held as tenants by the entirety anyway, the property most often held that way is the family home, and the people who would create these kinds of trusts for estate planning have enough money that the property held that way is not regarded as a big collection issue.

The Probate representative provided some of the reasons for holding property in that fashion (adding to the presentation at the Winter Conference), including avoiding probate and public disclosure of assets on the death of the second spouse, management by a trustee if the spouses become incompetent, and consolidation of all TBE property in one trust (and thereby avoid multiple probates, such as probate in Florida for the winter home and probate in Michigan home for the principal residence.

Although either spouse may revoke the trust holding the property by acting alone, as revised, the effect is that the property is then held by both them as tenants by the entirety.

David notes on behalf of the ad hoc committee, that this bill would provide an excuse to correct all of the other statutes on tenants by the entirety to use the term "spouse" instead of "husband" and "wife," just to generally clean things up using current forms. So far, the Probate & Estate Planning Section bill has not been introduced and so far we have not been able to get to bills for gender-neutral tenants by the entirety.

New Condominium Act – Senator O'Brien has interest in introducing a new Condominium Act. Presently, she is seeking counsel from the Michigan Association of Realtors and other interested groups. Drafting of the bill has not commenced and there is no timeline for when it might happen.

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 Varnum 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.

E-Notary legislation – The Secretary of State has initiated a bill which amends the Notary Public Act to include definitions for electronic acknowledgment and signatures. It further establishes process to enable the Secretary of State to review and approve technologies for the electronic performance of notarial acts and sets forth the criteria by which the technology will be judged. The draft was sent to the Titles and Conveyancing Committee for review and comment.