

REAL PROPERTY LAW SECTION LEGISLATIVE REPORT

December 6, 2017

Catharine LaMont, First American

GENERAL LEGISLATIVE BACKGROUND

The Legislature was not successful in changing Michigan's no-fault auto insurance law after the House of Representatives put up a bill that did not get enough votes to pass just before the Thanksgiving break.

With no-fault off the table for the end of the year, the focus turned to Other Post-Employment Benefits (OPEB) to reform. Both the House and Senate have packages of bills that would reform the funding system for the municipalities' mounting local pension and health care costs. The bills to reform the system were introduced the last week of November and had hearings the first week of December. Upon creation of this report, the Legislature is debating on whether to pass the legislation and supporters are trying to tally enough votes to move the package of bills.

LEGISLATION SIGNED INTO LAW SINCE LAST REPORT

Property Tax Liability	PA 189	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.
Records Package	PA 177	Sen. Hansen, Sen. Schmidt	Amends several acts to outline when a county clerk may destroy copies of documents in recognition of the Michigan History Center Act.

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 ad valorem taxes to the Michigan enterprise zone authority.
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

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.
Property Tax	PA 42	Sen. Hildenbrand	Modifies deadline date for delivery of combined document for personal property exemption.

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, committee of the whole with substitute.*

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, committee of the whole.*

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. The Council voted to oppose 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, committee of the whole.*

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.*

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, 2nd reading.*

Property Taxes – SB 572 -573 (Sen. Robertson, 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, 2nd reading.*

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

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. *Reported from Senate Banking and Financial Institutions and on the Senate floor. There was an amendment to the bill that raises the cap to \$200.*

Electronic Document Notarization – SB 664 (Sen. MacGregor) Updates Michigan Notary Public act language relating to electronic notarization of documents. 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. *Referred to Senate Finance.*

Tenant and Landlord Sanctions – SB 667 (Sen. Hertel) 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.*

Title Claims – SB 671 (Sen. Jones) Adds language to Marketable Title Act to include covenants and restrictions to matters which have not been raised in forty years. In order for a restrictive covenant to survive extinguishment under the Act, an instrument must be recorded reciting the liber and page of the creating instrument. *Referred to Senate Local Government.*

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.*

Attorneys - HB 4312 (Rep. LaFave) Modifies eligibility requirements for attorneys licensed in another state to practice law in Michigan. *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 in House.*

Brownfield Tax Credit – HB 4420 (Rep. Tedder) Allows amendments to extend the duration of certain brownfield credits beyond 10 years. *Reported in Senate.*

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 through their association, allowing by laws to permit the association to decide to litigate collection of association fees and enforcement of bylaws, and prohibits condominium documents from restricting the power of condominium association boards from engaging in certain legal actions. An exemption for actions by or against developers was included in the bill. The Council has requested that the Condominium Committee meet and analyze this bill

further and provide their recommendation on whether to support, oppose or monitor the bill. *Committee hearing in 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, committee 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.*

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. *Committee hearing in 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. *Third Reading in the House.*

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

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 and modifies powers and duties of public administrators acting as personal representatives. *Passed House, Reported from Senate Judiciary. Committee of the whole with substitute.*

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 determination 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.*

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.*

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

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 for 2nd reading.*

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 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 – HB 4949 (Rep. Yaroch) 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 5086 (Rep. Maturen) Modifies distribution of local community stabilization act share revenues. *Reported in House for 2nd reading.*

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.*

Obsolete Property – HB 5279 (Rep. Yaroch) Modifies criteria for obsolete property and rehabilitation credit. *Introduced to 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.

Senator Bieda is now working on a revised eight bill package that will likely be drafted and shared in January.

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.

