LEGISLATIVE REPORT
September 19, 2017
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GENERAL LEGISLATIVE BACKGROUND

The Legislature has resumed session at the beginning of September. There are a number of agenda items for the Legislature this fall including pension reform cleanup, school accountability and possibly no fault reform.

Several candidates have announced they are running for Governor including Attorney General Bill Schuette and Gretchen Whitmer, as the forerunners in the Republican and Democratic primaries. It is expected that Lt. Governor Brian Calley will announce his candidacy in the coming months. Additionally, many Representatives will be running for open Senate seats in 2018.

LEGISLATION SIGNED INTO LAW SINCE LAST REPORT

Delinquent Taxes	PA 27	Rep. Tedder	Clarifies administration of delinquent tax revolving funds
Transformational Brownfields	PA 46, 47,48, 49, 50	Sen. Horn, Brandenburg, Casperson, MacGregor, Bieda	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	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

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 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 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 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 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 Finance.*

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. *Introduced to Banking and Financial Institutions.*

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 in Senate*.

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 in Senate.*

Affordable Rental Housing – SB 110 (Sen. Schmidt). Allows 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 in 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 committee on Judiciary.*

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

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

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

House Bills

Income Tax – HB 4830 (Rep. Iden) Removes eligibility for MSHDA loans if not a national citizen or legal alien. *Referred to Tax Policy.*

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

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

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 Tax Policy.

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

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

Mortgages – HB 4875 (Rep. Sabo) Prescribes time period for veterans for acceleration of debt in mortgage foreclosure. *Referred to 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 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 Tax Policy.*

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

Land Use – HB 4266 (Rep. Kelly). Authorizes household agriculture in residential zones. *Referred to committee on 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 misrecorded. *Passed the House, referred to Senate Finance.*

Property Tax Exemptions – HB 4335 (Rep. Pagel) **HB 4336** (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. *Passed House, referred to Senate Finance.*

Assessment Districts – HB 4359 (Rep. Lucido). Allows townships to create special assessment districts for private utility services. *Referred to committee on local government.*

Property Tax Exemption – HB 4362 (Rep. Yaroch). Holds local units harmless for disabled veteran exemption. *Referred to committee on 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 committee on tax policy.*

Wills and Estates – HB 4410 (Rep. Lucido). Allows decendants to exclude adult child by written instrument. *Referred to committee on Judiciary.*

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 Judiciary Committee.*

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 committee on 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 Local Government Committee*.

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. *The bill has passed the 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 Tax Policy.*

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

Asset Forfeiture - HB 4158 (Rep. Lucido) Requires a criminal conviction before proceeding. *Referred to Judiciary Committee*.

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

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

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. *The substitute bill was adopted and reported from the House Committee on Law and Justice and is on second reading in the House.*

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

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 Committee.*

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

Attorneys - HB 4312 (Rep. LaFave) Modifies eligibility requirements for attorneys licensed in another state to practice law in Michigan. *Reported from committee, Advanced to Third Reading in House.*

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

Property Tax Dates - HB 4634 (Rep. Phelps) Modifies certain property tax collection dates. *Introduced to 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. *Introduced to 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. *Introduced to 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. *Introduced to Local Government.*

Rent Control - HB 4687 (Rep.Chang**)** Creates exception in rental control prohibition.
Introduced to Local Government.

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

Limited Liability Company - HB 4701 (Rep**.**Hughes**)** Waives certain fees under Michigan limited liability company act for certain veterans. *Introduced to Military and Veterans Affairs.*

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

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

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

Legal Material - HB 4779 (Rep. Kosowski) Provides for uniform electronic legal material. *Introduced to Law and Justice.*

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 of MSHDA 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. Representative Schor will reach out to Senator Bieda to reach some consensus on the bills.

Tenancy by the Entirety - Senator Jones (R- Grand Ledge). **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 demed 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 Warner Norcross & Judd 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 have 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.