

DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE DECEMBER 7, 2019 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee: The Committee does not currently have a meeting scheduled but anticipates that the next meeting will occur in January, 2020.

2. Council Approval

The Committee drafted and obtained approval to advocate adoption of the Michigan Uniform Assignment of Rents Act (the "MUARA"). The MUARA was based on the Uniform Assignment of Rents Act, but modified in light of Michigan law and practice. The MUARA was introduced in the House on October 8, 2019, H. B. 5086, along with a companion bill, H. B. 5092, by Representative Iden. Section 5, subparagraph (5) of H. B. 5086 and Subparagraph 7 of H. B. 5092 provide that a construction lien does not take priority over a perfected assignment of rents under the MUARA. Some construction groups have raised concerns as to these provisions. The members of the Committee at its November 18, 2019 meeting voted unanimously to remove those provisions so there would be less controversy about passage of the bill, and the relative priority would be determined by other statutes and case law. H. B. 5806 and H.B. 5092 are attached.

Thus the Committee is seeking authority to advocate passage of H. B. 5086 without the provision.

3. Membership

The Committee communicates regularly with its membership through its email list, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals.

The Committee works with other bankruptcy/insolvency bar groups and the bankruptcy bench to expose the members of those groups to the Committee and its activities, also increasing interest in the Committee.

The Committee has healthy attendance at its meetings and events.

4. Accomplishments Toward Committee Objectives

One of the Committee's objectives is communicating case law updates and debtor/creditor events to its members. The Committee has been actively using its listserv to accomplish these objectives. The Committee regularly discusses upcoming educational events, recent case law developments and newly enacted federal legislation on bankruptcy.

5. Meetings and Programs

Recent:

This past summer, the Committee presented a seminar on healthcare restructurings on July 24, 2019. Judith Greenstone Miller moderated a discussion among several healthcare experts including Honorable Daniel S. Opperman, U.S. Bankruptcy Judge, Eastern District of Michigan, Chief Judge Sixth Circuit Bankruptcy Appellate Panel; Travis Comstock, Assistant Attorney General, Michigan Department Of Attorney General, Health, Education & Family Services Division; Kevin Erskine, Assistant United States Attorney for the Eastern District of Michigan; Samuel R. Maizel, Dentons US LLP; and Andrew B. Wachler, Wachler & Associates, P.C.

On September 12, 2019, the Committee held a business meeting at which the Committee discussed educational events for 2019-20, recent case law developments, newly enacted federal legislation on bankruptcy and other upcoming events.

The Committee's last meeting was November 18, 2019. At that meeting, the Committee discussed (i) the new amendments to the Michigan Court Rules, amendments to the Federal Rules of Bankruptcy Procedure and Federal Rules of Appellate Procedure, all effective December 1, 2019, (ii) recent case law developments, and (iii) speaking and organizational opportunities for educational events in 2020.

Future:

The Committee is among one of several organizations which will host a reception to be held January 30, 2020, to honor Judge Marci B. McIvor, U.S. Bankruptcy Judge, Eastern District of Michigan, as she will be retiring from the bench.

6. Publications

See below in Section 7.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments

The Committee leadership is active in monitoring new statutes, rules and cases of interest to our members. Co Vice-Chair Paul R Hage writes case notes for the American Bankruptcy Institute's monthly magazine, and also keeps the Committee apprised of new case law developments.

Publication of Proposed Amendments to Federal Rules of Bankruptcy Procedure:

Earlier this year, the Standing Committee on Bankruptcy Rules for the National Judicial Conference submitted proposed amendments to various rules of the Federal Rules of Bankruptcy Procedure. The Committee reviewed, prepared and submitted formal written comments to proposed Federal Rule of Bankruptcy Procedure 2004(c) because, unlike Federal Rule of Civil Procedure 26, it did not contain the concept of proportionality with respect to e-discovery. The Committee's comment was not adopted.

8. Miscellaneous

The Committee discusses legislative developments and case law at its meetings, many of which are brought to our attention by our members.

Marc N. Swanson, Co-Chair
Judith Greenstone Miller, Co-Chair

Paul R. Hage, Co-Vice Chair
Shanna M. Kaminski, Co-Vice Chair

Judy B. Calton, Co-Chair Emeritus

HOUSE BILL NO. 5086

October 08, 2019, Introduced by Rep. Iden and referred to the Committee on Judiciary.

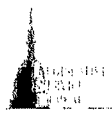
A bill to enact the uniform assignment of rents act; to provide for the creation, perfection, and enforcement of security interests in rents; to provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan uniform assignment of rents act".

3 Sec. 2. As used in this act:

4 (a) "Assignee" means a person entitled to enforce an
5 assignment of rents. Assignee includes the purchaser at a



1 foreclosure sale by operation of law.

2 (b) "Assignment of rents" means a transfer of an interest in
3 rents in connection with an obligation secured by real property
4 located in this state and from which the rents arise.

5 (c) "Assignor" means a person that makes an assignment of
6 rents or the successor owner of the real property from which the
7 rents arise.

8 (d) "Cash proceeds" means proceeds that are money, checks,
9 deposit accounts, or the like.

10 (e) "Day" means calendar day.

11 (f) "Deposit account" means a demand, time, savings, passbook,
12 or similar account maintained with a bank, savings bank, savings
13 and loan association, credit union, or trust company.

14 (g) "Document" means information that is inscribed on a
15 tangible medium or that is stored on an electronic or other medium
16 and is retrievable in perceivable form.

17 (h) "Notification" means a document containing information
18 that this act requires a person to provide to another, signed by
19 the person required to provide the information.

20 (i) "Person" means an individual, corporation, business trust,
21 estate, trust, partnership, limited liability company, association,
22 joint venture, public corporation, government, or governmental
23 subdivision, agency, or instrumentality, or any other legal or
24 commercial entity.

25 (j) "Proceeds" means personal property that is received or
26 collected on account of a tenant's obligation to pay rents.

27 (k) "Purchase" means to take by sale, lease, discount,
28 negotiation, mortgage, pledge, lien, security interest, issue or
29 reissue, gift, or any other voluntary transaction creating an



1 interest in property.

2 (l) "Rental agreement" means an agreement by which a person is
3 obligated to pay rents to the assignor.

4 (m) "Rents" means any of the following:

5 (i) Sums payable for the right to possess or occupy, or for the
6 actual possession or occupation of, real property of another
7 person.

8 (ii) Sums payable to an assignor under a policy of rental
9 interruption insurance covering real property.

10 (iii) Claims arising out of a default in the payment of sums
11 payable for the right to possess or occupy real property of another
12 person.

13 (iv) Sums payable to terminate an agreement to possess or
14 occupy real property of another person.

15 (v) Sums payable to an assignor for payment or reimbursement
16 of expenses incurred in owning, operating, and maintaining, or
17 constructing or installing improvements on, real property.

18 (vi) Fees, charges, accounts, or other payments for the use or
19 occupancy of rooms and other facilities in hotels, motels, or other
20 lodging properties.

21 (vii) Any other sums payable under an agreement relating to the
22 real property of another person that constitute rents under law of
23 this state other than this act.

24 (n) "Secured obligation" means an obligation the performance
25 of which is secured by an assignment of rents.

26 (o) "Security instrument" means a document, however
27 denominated, that creates or provides for a security interest in
28 real property, including a land contract, whether or not it also
29 creates or provides for a security interest in personal property.



1 (p) "Security interest" means an interest in property that
2 arises by agreement and secures performance of an obligation.

3 (q) "Sign" means, with present intent to authenticate or adopt
4 a document, to do either of the following:

5 (i) Execute or adopt a tangible symbol.

6 (ii) Attach to or logically associate with the document an
7 electronic sound, symbol, or process.

8 (r) "State" means a state of the United States, the District
9 of Columbia, Puerto Rico, the United States Virgin Islands, or any
10 territory or insular possession subject to the jurisdiction of the
11 United States.

12 (s) "Submit for recording" means to submit a document
13 complying with applicable legal standards, with required fees and
14 taxes, to the register of deeds for the county in which the real
15 property is located.

16 (t) "Tenant" means a person that has an obligation to pay sums
17 for the right to possess or occupy, or for possessing or occupying,
18 the real property of another person.

19 Sec. 3. (1) Except as otherwise provided in subsections (3)
20 and (4), a person gives a notification or a copy of a notification
21 under this act by doing either of the following:

22 (a) Depositing it with the United States Postal Service or
23 with a commercially reasonable delivery service, properly addressed
24 to the intended recipient's address as specified in subsection (2),
25 with first-class postage or cost of delivery provided for.

26 (b) If the recipient agreed to receive notification by
27 facsimile transmission, electronic mail, or other electronic
28 transmission, sending it to the recipient in the agreed manner at
29 the address specified in the agreement.



1 (2) The following rules determine the proper address for
2 giving a notification under subsection (1):

3 (a) A person giving a notification to an assignee shall use
4 the address for notices to the assignee provided in the document
5 creating the assignment of rents, but, if the assignee has provided
6 the person giving the notification with a more recent address for
7 notices, the person giving the notification shall use that address.

8 (b) A person giving a notification to an assignor shall use
9 the address for notices to the assignor provided in the document
10 creating the assignment of rents, but, if the assignor has provided
11 the person giving the notification with a more recent address for
12 notices, the person giving the notification shall use that address.

13 (c) If a tenant's agreement with an assignor provides an
14 address for notices to the tenant and the person giving
15 notification has received a copy of the agreement or knows the
16 address for notices specified in the agreement, the person giving
17 the notification shall use that address in giving a notification to
18 the tenant. Otherwise, the person shall use the address of the
19 premises covered by the agreement.

20 (3) If a person giving a notification pursuant to this act and
21 the recipient have agreed to the method for giving a notification,
22 any notification must be given by that method.

23 (4) If a notification is received by the recipient, it is
24 effective even if it was not given in accordance with subsection
25 (1) or (3).

26 Sec. 4. (1) An assignment of rents is created by an assignment
27 in either an enforceable security instrument that grants a security
28 interest in rents or a document that grants a security interest in
29 rents which is signed in connection with an enforceable security



1 instrument as to any real property described in the document
2 creating the assignment of rents.

3 (2) Except as provided in subsection (5), an assignment of
4 rents creates a presently effective security interest in all
5 accrued and unaccrued rents arising from the real property
6 described in the document creating the assignment, regardless of
7 whether the document is in the form of an absolute assignment, an
8 absolute assignment conditioned upon default, an assignment as
9 additional security, or any other form. The security interest in
10 rents is separate and distinct from any security interest held by
11 the assignee in the real property.

12 (3) A discharge of a security instrument discharges by
13 operation of law any assignment of rents made in connection with
14 the discharged security instrument.

15 (4) Upon a foreclosure of the security instrument, all of the
16 following apply:

17 (a) The assignment of rents made in connection with the
18 security instrument continues to be effective to the extent of the
19 remaining secured obligation and transfers to the purchaser at the
20 foreclosure sale by operation of law whether or not the foreclosure
21 notice makes reference to the assignment of rents. Any transfer of
22 the foreclosure deed by the holder of the deed also transfers the
23 assignment of rents to the transferee by operation of law.

24 (b) The assignment of rents made in connection with the
25 security instrument automatically terminates upon the earlier of
26 the following:

27 (i) Redemption from the foreclosure sale.

28 (ii) Expiration of the redemption period without redemption.

29 (5) This act does not apply to an assignment of rents



1 regarding an interest in real property improved by 1 to 4 dwelling
2 units unless 1 or more of the following apply:

3 (a) The interest is used for agricultural, commercial,
4 industrial, or mineral-extraction purposes, other than incidental
5 uses by an assignor occupying the property as the assignor's
6 primary residence.

7 (b) The interest secures an obligation incurred at a time when
8 the property was used or planned for use for agricultural,
9 commercial, industrial, or mineral-extraction purposes.

10 (c) The assignor planned or is planning to develop the
11 property into 1 or more dwelling units to be sold or leased in the
12 ordinary course of the owner's business.

13 (d) The assignor is collecting or has the right to collect
14 rents or other income from the property from a person other than an
15 affiliate of the assignor.

16 Sec. 5. (1) A document creating an assignment of rents may be
17 submitted for recording to the register of deeds in the same manner
18 as any other document evidencing a conveyance of an interest in
19 real property.

20 (2) Upon recording, the security interest in rents created by
21 an assignment of rents is fully perfected, even if a provision of
22 the document creating the assignment or law of this state other
23 than this act would preclude or defer enforcement of the security
24 interest until the occurrence of a subsequent event, including a
25 subsequent default of the assignor, the assignee's obtaining
26 possession of the real property, or the appointment of a receiver.

27 (3) Except as otherwise provided in subsection (4), a
28 perfected security interest in rents takes priority over the rights
29 of a person that, after the security interest is perfected, does

1 either of the following:

2 (a) Acquires a judicial lien against the rents or the real
3 property from which the rents arise.

4 (b) Purchases an interest in the rents or the real property
5 from which the rents arise.

6 (4) A perfected security interest in rents has priority over
7 the rights of a person described in subsection (3) with respect to
8 future advances to the same extent as the assignee's security
9 interest in the real property has priority over the rights of that
10 person with respect to future advances.

11 (5) A perfected security interest in rents takes priority as
12 to rents over the rights of a person asserting a lien under the
13 construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

14 Sec. 6. (1) An assignee may enforce an assignment of rents
15 using 1 or more of the methods specified in sections 7, 8, and 9 or
16 any other method sufficient to enforce the assignment under law of
17 this state other than this act.

18 (2) From the first date of enforcement, the assignee or, in
19 the case of enforcement by appointment of a receiver under section
20 7, the receiver, is entitled to collect all of the following:

21 (a) Rents that have accrued but remain unpaid on that date.

22 (b) Rents that accrue on or after that date, as those rents
23 accrue.

24 (3) From the first date of enforcement, a modification of the
25 rental agreement is not binding on the assignee without the written
26 consent of the assignee.

27 Sec. 7. (1) An assignee is entitled to the appointment of a
28 receiver for the real property subject to the assignment of rents
29 if either of the following applies:



1 (a) The assignor is in default and any of the following apply:

2 (i) The assignor has agreed in a signed document to the
3 appointment of a receiver in the event of the assignor's default.

4 (ii) It appears likely that the real property and any other
5 collateral granted by the assignor to the assignee may not be
6 sufficient to satisfy the secured obligation.

7 (iii) The assignor has failed to turn over to the assignee
8 proceeds that the assignee was entitled to collect under this act.

9 (iv) A subordinate assignee of rents obtains the appointment of
10 a receiver for the real property.

11 (b) Other circumstances exist that would justify the
12 appointment of a receiver under law of this state other than this
13 act.

14 (2) An assignee may file a petition for the appointment of a
15 receiver if any of the following apply:

16 (a) The petition is filed in connection with an action to
17 foreclose the security instrument.

18 (b) The petition is filed in connection with an action for
19 specific performance of the assignment.

20 (c) The petition is filed in connection with an action seeking
21 a remedy on account of waste or threatened waste of the real
22 property subject to the assignment.

23 (d) The petition is filed in connection with an action to
24 otherwise enforce the secured obligation or the assignee's remedies
25 arising from the assignment.

26 (e) Other circumstances exist that would justify the
27 appointment of a receiver under law of this state other than this
28 act.

29 (3) An assignee that files a petition for the appointment of a



1 receiver shall also give a copy of the petition in the manner
2 specified in section 3 to any other person that, 10 days before the
3 date the petition is filed, held a recorded assignment of rents
4 arising from the real property.

5 (4) If an assignee enforces an assignment of rents by seeking
6 the appointment of a receiver, the date of enforcement is the date
7 on which the assignee files a petition to appoint a receiver as to
8 the assignment of rents if the court enters an order appointing a
9 receiver for the real property subject to the assignment.

10 (5) From the date of its appointment, a receiver is entitled
11 to collect rents as provided in section 6(2). The receiver also has
12 the authority provided in the order of appointment and law of this
13 state other than this act.

14 (6) The following rules govern priority among receivers:

15 (a) If more than 1 assignee qualify under this section for the
16 appointment of a receiver, a receivership requested by an assignee
17 entitled to priority in rents under this act has priority over a
18 receivership requested by a subordinate assignee, even if a court
19 has previously appointed a receiver for the subordinate assignee.

20 (b) If a subordinate assignee obtains the appointment of a
21 receiver, the receiver may collect the rents and apply the proceeds
22 in the manner specified in the order appointing the receiver until
23 a receiver is appointed under a senior assignment of rents.

24 Sec. 8. (1) Upon the assignor's default, or as otherwise
25 agreed by the assignor, the assignee may give the assignor a notice
26 demanding that the assignor pay over the proceeds of any rents that
27 the assignee is entitled to collect under section 6. The assignee
28 shall record the notice in the office of the register of deeds in
29 the same manner as the security instrument is recorded. The filing



1 of a petition for appointment of a receiver, if it is served in the
2 manner provided in section 3 within 10 days after it is filed,
3 constitutes a recorded notification demanding that the assignor pay
4 over the proceeds of any rents that the assignee is entitled to
5 collect under section 6. The assignee shall also give a copy of the
6 recorded or filed notification to any other person that, 10 days
7 before the notification date, held a recorded assignment of rents
8 arising from the real property.

9 (2) If an assignee enforces an assignment of rents under this
10 section, the date of enforcement is the date on which the assignor
11 receives a notification under subsection (1). If the notification
12 was served in the manner provided in section 3 within 10 days after
13 it was recorded, the date of enforcement is the date of recording.

14 (3) An assignee's failure to give a notification under
15 subsection (1) to any person holding a recorded assignment of rents
16 does not affect the effectiveness of the notification as to the
17 assignor, but the other person is entitled to any relief permitted
18 under law of this state other than this act.

19 Sec. 9. (1) Upon the assignor's default, or as otherwise
20 agreed by the assignor, the assignee may give to a tenant of the
21 real property a notification demanding that the tenant pay to the
22 assignee all unpaid accrued rents and all unaccrued rents as they
23 accrue. The assignee shall give a copy of the notification to the
24 assignor and to any other person that, 10 days before the
25 notification date, held a recorded assignment of rents arising from
26 the real property. The notification must be signed by the assignee
27 and do all of the following:

28 (a) Identify the tenant, assignor, assignee, premises covered
29 by the agreement between the tenant and the assignor, and



1 assignment of rents being enforced.

2 (b) Provide the recording data for the document creating the
3 assignment or other reasonable proof that the assignment was made.

4 (c) State that the assignee has the right to collect rents in
5 accordance with the assignment.

6 (d) Direct the tenant to pay to the assignee all unpaid
7 accrued rents and all unaccrued rents as they accrue.

8 (e) Describe the manner in which subsections (3) and (4)
9 affect the tenant's payment obligations.

10 (f) Provide the name and telephone number of a contact person
11 and an address to which the tenant can direct payment of rents and
12 any inquiry for additional information about the assignment or the
13 assignee's right to enforce the assignment.

14 (g) Contain a statement that the tenant may consult a lawyer
15 if the tenant has questions about its rights and obligations.

16 (h) Have attached a copy of the recorded or filed notification
17 to the assignor as provided in section 8.

18 (2) If an assignee enforces an assignment of rents under this
19 section, the date of enforcement as to the tenant is the date on
20 which the tenant receives a notification substantially complying
21 with subsection (1).

22 (3) Subject to subsection (4) and any other claim or defense
23 that a tenant has under an agreement enforceable against the
24 assignee or under the law of this state other than this act,
25 following receipt of a notification substantially complying with
26 subsection (1), all of the following apply:

27 (a) A tenant is obligated to pay to the assignee all unpaid
28 accrued rents and all unaccrued rents as they accrue, unless the
29 tenant has previously received a notification from another assignee



1 of rents given by that assignee in accordance with this section and
2 the other assignee has not canceled that notification.

3 (b) A tenant that pays rents to the assignor is not discharged
4 from the obligation to pay rents to the assignee.

5 (c) A tenant's payment to the assignee of rents then due
6 satisfies the tenant's obligation under the tenant's rental
7 agreement to the extent of the payment made.

8 (d) A tenant's obligation to pay rents to the assignee
9 continues until the tenant receives a court order directing the
10 tenant to pay the rent in a different manner or a signed document
11 from the assignee canceling its notification, whichever occurs
12 first.

13 (e) A modification of the rental agreement is not binding on
14 the assignee without the assignee's written consent.

15 (4) A tenant that has received a notification under subsection
16 (1) is not in default under its rental agreement for nonpayment of
17 rents accruing within 30 days after the date the notification is
18 received before the earlier of the following:

19 (a) Ten days after the date the next regularly scheduled
20 rental payment would be due.

21 (b) Thirty days after the date the tenant receives the
22 notification.

23 (5) Upon receiving a notification from another creditor that
24 is entitled to priority under section 5(3) that the other creditor
25 has enforced and is continuing to enforce its interest in rents, an
26 assignee that has given a notification to a tenant under subsection
27 (1) shall immediately give another notification to the tenant
28 canceling the earlier notification.

29 (6) An assignee's failure to give a notification under



subsection (1) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this act.

Sec. 10. No particular phrasing is required for the notification specified in section 9. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of section 9:

NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: _____

Name of Tenant

Property Occupied by Tenant (the "Premises"): _____

Address

Landlord: _____

Name of Landlord

Assignee: _____

Name of Assignee

Address of Assignee and Telephone Number of Contact Person:

Address of Assignee

Telephone Number of Person to Contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under

Name of Document

(the "Assignment of Rents") dated _____, and recorded in

Date



1 the records of the _____ County Register of Deeds at
2 _____ County

3 _____
4 Recording Data

5 You may obtain additional information about the Assignment of
6 Rents and the Assignee's right to enforce it at the address listed
7 above.

8 2. The Landlord is in default under the Assignment of Rents.
9 Under the Assignment of Rents, the Assignee is entitled to collect
10 rents from the Premises.

11 3. This notification affects your rights and obligations under
12 the rental agreement under which you occupy the Premises (your
13 "Rental Agreement"). In order to provide you with an opportunity to
14 consult with a lawyer, if your next scheduled rental payment is due
15 within 30 days after you receive this notification, neither the
16 Assignee nor the Landlord can hold you in default under your Rental
17 Agreement for nonpayment of that rental payment until 10 days after
18 the due date of that payment or 30 days following the date you
19 receive this notification, whichever occurs first. You may consult
20 a lawyer at your expense concerning your rights and obligations
21 under your Rental Agreement and the effect of this notification.

22 4. You must pay to the Assignee at the address listed above
23 all rents under your Rental Agreement which are due and payable on
24 the date you receive this notification and all rents accruing under
25 your Rental Agreement after you receive this notification. If you
26 pay rents to the Assignee after receiving this notification, the
27 payment will satisfy your rental obligation to the extent of that
28 payment.

29 5. If you pay any rents to the Landlord after receiving this

1 notification, your payment to the Landlord will not discharge your
 2 rental obligation, and the Assignee may hold you liable for that
 3 rental obligation notwithstanding your payment to the Landlord.

4 6. Any modification of the Rental Agreement is not binding on
 5 the Assignee without the Assignee's written consent.

6 7. If you have previously received a notification from another
 7 person that also holds an assignment of the rents due under your
 8 Rental Agreement, you should continue paying your rents to the
 9 person that sent that notification until that person cancels that
 10 notification. Once that notification is canceled, you must begin
 11 paying rents to the Assignee in accordance with this notification.

12 8. Your obligation to pay rents to the Assignee will continue
 13 until you receive either:

14 (a) a written order from a court directing you to pay the rent
 15 in a manner specified in that order; or

16 (b) written instructions from the Assignee canceling this
 17 notification.

18 _____
 19 Name of Assignee

20 By: _____

21 Signature of Officer/Authorized Representative of Assignee

22 _____
 23 Name and Title of Officer/Authorized Representative

24 Sec. 11. The enforcement of an assignment of rents by 1 or
 25 more of the methods identified in sections 7, 8, and 9, the
 26 application of proceeds by the assignee under section 12 after
 27 enforcement, the payment of expenses under section 13, or an action
 28 under section 14(4) does not do any of the following:

29 (a) Make the assignee a mortgagee in possession of the real



1 property.

2 (b) Make the assignee an agent of the assignor.

3 (c) Constitute an election of remedies that precludes a later
4 action to enforce the secured obligation or the security
5 instrument.

6 (d) Make the secured obligation or the security instrument
7 unenforceable.

8 (e) Limit any right available to the assignee with respect to
9 the secured obligation.

10 Sec. 12. Unless otherwise agreed, an assignee that collects
11 rents under this act or collects upon a judgment in an action under
12 section 14(4) shall apply the sums collected in the following
13 order:

14 (a) To the assignee's reasonable expenses of enforcing its
15 assignment of rents, including, to the extent provided for by
16 agreement and not prohibited by law of this state other than this
17 act, reasonable attorney fees and costs incurred by the assignee.

18 (b) To reimbursement of any expenses incurred by the assignee
19 to protect or maintain the real property subject to the assignment.

20 (c) To payment of the secured obligation.

21 (d) To payment of any obligation secured by a subordinate
22 security interest or other lien on the rents if, before
23 distribution of the proceeds, the assignor and assignee receive a
24 notification from the holder of the interest or lien demanding
25 payment of the proceeds.

26 (e) To the assignor.

27 Sec. 13. (1) Unless otherwise agreed by the assignee, and
28 subject to subsection (3), an assignee that collects rents
29 following enforcement under section 8 or 9 need not apply them to



1 the payment of expenses of protecting or maintaining the real
2 property subject to the assignment.

3 (2) Unless a tenant has made an enforceable agreement not to
4 assert claims or defenses, the right of the assignee to collect
5 rents from the tenant is subject to the terms of the agreement
6 between the assignor and tenant and any claim or defense arising
7 from the assignor's nonperformance of that agreement.

8 (3) This act does not limit the standing or right of a tenant,
9 assignor, or other affected person to request a court to appoint a
10 receiver for the real property subject to the assignment or to seek
11 other relief on the ground that the assignee's nonpayment of
12 expenses of protecting or maintaining the real property has caused
13 or threatened harm to the tenant's, assignor's, or other affected
14 person's interest in the property.

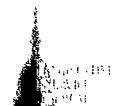
15 Sec. 14. (1) In this section, "good faith" means honesty in
16 fact and the observance of reasonable commercial standards of fair
17 dealing.

18 (2) If an assignor collects rents that the assignee is
19 entitled to collect under this act, both of the following apply:

20 (a) The assignor shall turn over the proceeds to the assignee,
21 less any amount representing payment of expenses authorized by the
22 assignee.

23 (b) The assignee continues to have a security interest in the
24 proceeds so long as they are identifiable.

25 (3) For purposes of this act, cash proceeds are identifiable
26 if they are maintained in a segregated account or, if commingled
27 with other funds, to the extent the assignee can identify them by a
28 method of tracing, including application of equitable principles,
29 that is permitted under law of this state other than this act with



1 respect to commingled funds.

2 (4) In addition to any other remedy available to the assignee
3 under law of this state other than this act, if an assignor fails
4 to turn over proceeds to the assignee as required by subsection
5 (2), the assignee may recover from the assignor or a person liable
6 under the uniform voidable transactions act, 1998 PA 434, MCL
7 566.31 to 566.45, or both, in a civil action, both of the
8 following:

9 (a) The proceeds, or an amount equal to the proceeds, that the
10 assignor was obligated to turn over under subsection (2).

11 (b) Reasonable attorney fees and costs incurred by the
12 assignee to the extent provided for by agreement and not prohibited
13 by law of this state other than this act.

14 (5) The assignee may maintain an action under subsection (4)
15 without bringing an action to foreclose any security interest that
16 it may have in the real property, and an action under subsection
17 (4) does not bar a foreclosure by advertisement under chapter 32 of
18 the revised judicature act of 1961, 1961 PA 236, MCL 600.3201 to
19 600.3285. Any sums recovered in the action must be applied in the
20 manner specified in section 12.

21 (6) Unless otherwise agreed, if an assignee entitled to
22 priority under section 5(3) enforces its interest in rents after
23 another creditor holding a subordinate security interest in rents
24 has enforced its interest under section 8 or 9, the creditor
25 holding the subordinate security interest in rents is not obligated
26 to turn over any proceeds that it collects in good faith before the
27 creditor receives notification that the senior assignee has
28 enforced its interest in rents. The creditor shall turn over to the
29 senior assignee any proceeds that it collects after it receives the



1 notification.

2 Sec. 15. (1) As used in this section:

3 (a) "Article 9" means article 9 of the uniform commercial
4 code, 1962 PA 174, MCL 440.9101 to 440.9809, or, to the extent
5 applicable to any particular issue, article 9 of the uniform
6 commercial code as adopted by the state whose laws govern that
7 issue under the choice-of-laws rules contained in article 9 as
8 adopted by this state.

9 (b) "Conflicting interest" means an interest in proceeds, held
10 by a person other than an assignee, that is either of the
11 following:

12 (i) A security interest arising under article 9.

13 (ii) Any other interest if article 9 resolves the priority
14 conflict between that person and a secured party with a conflicting
15 security interest in the proceeds.

16 (2) An assignee's security interest in identifiable cash
17 proceeds is perfected if its security interest in rents is
18 perfected. An assignee's security interest in identifiable noncash
19 proceeds is perfected only if the assignee perfects that interest
20 in accordance with article 9.

21 (3) Except as otherwise provided in subsection (4), priority
22 between an assignee's security interest in identifiable proceeds
23 and a conflicting interest is governed by the priority rules in
24 article 9.

25 (4) An assignee's perfected security interest in identifiable
26 cash proceeds is subordinate to a conflicting interest that is
27 perfected by control under article 9 but has priority over a
28 conflicting interest that is perfected other than by control.

29 Sec. 16. This act does not preclude subordination by agreement



1 as to rents or proceeds.

2 Sec. 17. In applying and construing this uniform act,
3 consideration must be given to the need to promote uniformity of
4 the law with respect to its subject matter among states that enact
5 it.

6 Sec. 18. This act modifies, limits, or supersedes the
7 electronic signatures in global and national commerce act, 15 USC
8 7001 to 7031, but does not modify, limit, or supersede 15 USC
9 7001(c), or authorize electronic delivery of any of the notices
10 described in 15 USC 7003(b).

11 Sec. 19. (1) Except as otherwise provided in this section,
12 this act governs the enforcement of an assignment of rents and the
13 perfection and priority of a security interest in rents, even if
14 the document creating the assignment was signed and delivered
15 before the effective date of this act.

16 (2) This act does not affect an action or proceeding commenced
17 before the effective date of this act.

18 (3) This act does not affect any of the following:

19 (a) The enforceability of an assignee's security interest in
20 rents or proceeds if, immediately before the effective date of this
21 act, that security interest was enforceable.

22 (b) The perfection of an assignee's security interest in rents
23 or proceeds if, immediately before the effective date of this act,
24 that security interest was perfected.

25 (c) The priority of an assignee's security interest in rents
26 or proceeds with respect to the interest of another person if,
27 immediately before the effective date of this act, the interest of
28 the other person was enforceable and perfected, and that priority
29 was established.



1 Sec. 20. This act takes effect 90 days after the date it is
2 enacted into law.

3 Sec. 21. The following acts are repealed:

4 (a) 1925 PA 228, MCL 554.211 to 554.214.

5 (b) 1953 PA 210, MCL 554.231 to 554.233.

6 Enacting section 1. This act does not take effect unless all
7 of the following bills of the 100th Legislature are enacted into
8 law:

9 (a) Senate Bill No. _____ or House Bill No. 5091 (request no.
10 01421'19 a).

11 (b) Senate Bill No. _____ or House Bill No. 5092 (request no.
12 01421'19 b).



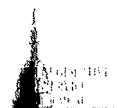
HOUSE BILL NO. 5092

October 08, 2019, Introduced by Rep. Iden and referred to the Committee on Judiciary.

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending section 119 (MCL 570.1119), as amended by 2018 PA 367.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 119. (1) Except as otherwise provided by subsection (4),
2 as between parties entitled to claim construction liens under this
3 act, the liens have equal priority. This subsection applies and the
4 construction liens have equal priority regardless of whether the
5 lien arises at the time of the first actual physical improvement or
6 at the time a notice is recorded under section 107a or 107b.



TDR



01421'19 b

1 (2) A construction lien under this act has priority over all
2 garnishments for the contract debt made after the lien arises,
3 without regard to the date of recording of the claim of lien.

4 (3) ~~A-Except as provided in subsection (7),~~ a construction
5 lien arising under this act has priority over all other interests,
6 liens, or encumbrances that may attach to the building, structure,
7 or improvement, or on the real property on which the building,
8 structure, or improvement is erected, if the other interests,
9 liens, or encumbrances are recorded after the construction lien
10 arises.

11 (4) A mortgage, lien, encumbrance, or other interest recorded
12 before the construction lien arises has priority over a
13 construction lien arising under this act. The priority of the
14 mortgage exists as to all obligations secured by the mortgage
15 except for indebtedness arising out of advances made after the
16 construction lien arises. An advance made pursuant to the mortgage,
17 but after the construction lien arises, has priority over a
18 construction lien if, for that advance, the mortgagee has received
19 a contractor's sworn statement as provided in section 110, has made
20 disbursements pursuant to the contractor's sworn statement, and has
21 received waivers of lien from the contractor and all
22 subcontractors, laborers, and suppliers who have provided notices
23 of furnishing. The construction lien of a lien claimant not set
24 forth on the sworn statement on which an advance was made is
25 subordinate to the lien of the mortgage, including the advance,
26 unless before the advance the lien claimant provided the designee
27 with a notice of furnishing if required by section 109 or recorded
28 a claim of lien. An advance made after a notice of furnishing has
29 been provided or has been excused as provided in sections 108,



1 108a, and 109 or after a claim of lien has been recorded is
2 subordinate to the construction lien of the lien claimant unless
3 before the advance the mortgagee received from the lien claimant
4 either a full unconditional waiver of lien or a partial
5 unconditional waiver of lien for the full amount due the lien
6 claimant as of the date through which the lien is waived as shown
7 on the lien waiver and the date through which the lien is waived as
8 shown on the partial unconditional waiver is within 30 days before
9 the advance.

10 (5) For purposes of this section, retainage that is not
11 payable under a contract until a certain event happens in addition
12 to an improvement being provided, is not due as of the date the
13 improvement is provided.

14 (6) For purposes of determining priorities under this section,
15 a construction lien arises as follows:

16 (a) Except as provided in subdivision (b), at the time of the
17 first actual physical improvement.

18 (b) As to a lien claimed by a person after the person has
19 recorded a notice under section 107a or 107b, at the time a notice
20 is recorded, subject to any applicable limitation under section
21 107a(4) or 107b(4).

22 **(7) A construction lien under this act does not take priority**
23 **over a perfected security interest in rents under the Michigan**
24 **uniform assignment of rents act.**

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.

27 Enacting section 2. This amendatory act does not take effect
28 unless Senate Bill No. ____ or House Bill No. 5086 (request no.
29 01421'19) of the 100th Legislature is enacted into law.

