MICHIGAN REAL PROPERTY REVIEW

REAL PROPERTY LAW SECTION

STATE BAR OF MICHIGAN

Vol. 9, No. 6 | December, 1982

Chairman: William B. Dunn | Editor: George J. Siedel, III

CONTENTS

Page

Voting Rights for Limited Partners Under Michigan's Revised Uniform Limited Partnership Act by Thomas S. Vaughn — 261

Garn-St. Germaine and Due-on-Sale Clauses in Michigan by Timothy A. Fusco — 275

Michigan's New Statute on Married Women's Contractual Capacity: The End of Coverture? by George D. Cameron, III — 280

Preservation Tax Credits: Everybody Wins by Janet L. Kreger — 286

Chairman's Report by William B. Dunn — 292

The Legislative Scene by Robert J. McCullen — 295

Recent Decisions by Joseph A. Lloyd — 297

Section News — 300

1982-83 Continuing Legal Education Schedule — 301

1983 Publication Schedule — 302

Cumulative Article Index — 303

Who are we that we should insist upon certainties
in a world of no more at best than probabilities.

Judge Learned Hand

Articles and letters which appear in the **Michigan Real Property Review** do not necessarily reflect the position of the State Bar of Michigan, the Real Property Law Section, or any government body, and their publication does not constitute an endorsement of opinions or legal conclusions which may be expressed.

Readers are invited to submit their own articles, comments and opinions to George J. Siedel, Editor, 526 Business Administration, University of Michigan, Ann Arbor, Michigan 48109. Publication and editing are at the discretion of the editor.

VOTING RIGHTS FOR LIMITED PARTNERS UNDER MICHIGAN'S REVISED UNIFORM LIMITED PARTNERSHIP ACT

by
Thomas S. Vaughn
Dykema, Gossett, Spencer, Goodnow & Trigg

INTRODUCTION

The State of Michigan recently adopted a Revised Uniform Limited Partnership Act ("MRULPA" or "Revised Act"),[1] which is based upon the Uniform Limited Partnership Act adopted by the National Conference of Commissioners of Uniform State Laws in August, 1976.[2] The Revised Act will generally replace Michigan's current Uniform Limited Partnership Act ("MULPA"), effective January 1, 1983.[3]

The Revised Act substantially changes the MULPA provisions governing the extent to which limited partners may participate in the management of a limited partnership without becoming liable as general partners. The MRULPA provisions dealing with the issue permit promoters of limited partnerships to provide limited partners with limited voting participation in partnership affairs. As a result, The Revised Act should be of great assistance to promoters of limited partnerships who have been required by various state securities bureaus to include such limited partner voting rights in their partnership agreements, but who have been constrained from complying with such requirement because of a Michigan Attorney General's opinion generally prohibiting the inclusion of such rights in partnership agreements.

THE CURRENT ACT

It is reasonable to expect that persons investing money in a business would desire to have some measure of control over that business. The drafters of the ULPA appear to recognize this fact in the following introductory comment to the ULPA:

> No public policy requires a person who contributes to the capital of a business, acquires an interest in the profits, and some degree of control over the conduct of the business, to become bound for the obligations of the business; provided creditors have no reason to believe at the time their credits were extended that such person was so bound.[4]

---

1. Act No. 213, 1982 Michigan Public Acts ("MRULPA").

2. As of September, 1982, the RULPA Act has been adopted in sixteen jurisdictions: Arkansas, Connecticut, Maryland, Minnesota, Washington, West Virginia, Wyoming, Arizona, California, Colorado, Idaho, Iowa, Massachusetts, Montana, Nebraska and Michigan.

3. M.C.L. §449.201 et seq. (Act No. 110, 1931 Michigan Public Acts) ("MULPA").

4. Uniform Limited Partnership Act §7, Official Comment ("ULPA").

Unfortunately, Section 7 of the MULPA, which currently governs the extent to which limited partners may participate in the management of a limited partnership without becoming liable as general partners is not nearly so generous. Section 7 provides as follows:

> Sec. 7. LIMITED PARTNER NOT LIABLE TO CREDITORS. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, **he takes part in the control of the business.**[5]

Section 7 is identical to Section 7 of the Uniform Limited Partnership Act ("ULPA") adopted by the National Conference of Commissioners of Uniform State Laws in 1916.

While there is no per se prohibition against limited partner voting rights under the MULPA, there is also no specific authorization of such voting rights. In addition, neither the MULPA nor the ULPA attempt to define the phrase "takes part in the control of the business." Promoters who are required to give limited partners some degree of participation in the management of partnership affairs must determine the difference between the permitted control as envisioned by the comment and the prohibited control set forth in the statute. As a result, promoters who give limited partners the right to participate in the management of a limited partnership run the risk that an unpaid creditor will seek to destroy the limited liability of the limited partners because they are taking part in the control of the business.

There is very little case law interpreting Section 7 of the ULPA or the MULPA. The case law that does exist under Section 7 is contradictory and of limited application as a result of its reliance upon the facts and circumstances of each case. While a full discussion of the relevant case law is beyond the scope of this article, a brief discussion is warranted insofar as such case law will have application to the Revised Act in areas where limited partners are involved in activities which go beyond the "safe harbor" provisions of the Revised Act.[6]

There appear to be two lines of decisions which have arisen under Section 7. Some courts have applied a "control test" to determine whether a limited partner should be personally liable for the partnership's debts. Under the "control test," limited partners who have engaged in acts of management which a court views as taking part in the control of the business are personally liable to third parties, regardless of whether or not such acts were known or relied upon by such third parties.[7] Generally, the courts applying the "control test" have required a limited partner to be involved in the "day-to-day" operations of the partnership in order for them to lose their limited liability. Limited partners who merely participated in decision making regarding fundamental

---

5. M.C.L. 449.207.

6. MRULPA 303(b).

7. **Gast v. Petsinger**, 323 A.2d 371 (S. Ct. Pa. 1974); **Weil v. Diversified Properties**, 319 F. Supp. 778 (D.C. 1970).

issues affecting the partnership (i.e. sale of substantially all of the assets[8] or consulting with and advising the general partners[9]) were not found to be participating in control.

Other courts have applied a "reliance test." Under the "reliance test," a court looks to the question of whether the activities of a limited partner would have reasonably led a third party to believe the limited partner had liability as a general partner.[10] For example, where an accountant dealing with a limited partner of the partnership was aware of the limited partner's status at all relevant times, he was not permitted to argue that the limited partner had acted other than in that capacity.[11]

A number of courts have applied variations of these tests[12] or have attempted to apply both tests to a given situation.[13] Because of these conflicting decisions, the case law gives promoters very little guidance as to the extent of permitted limited partner activities and little comfort for permitting limited partners to vote on a limited partnership's affairs.

The problem is compounded in Michigan because of an unpublished Michigan Attorney General's opinion, dated November 5, 1979, which has caused Michigan promoters to question the propriety of giving limited partners even the most basic rights of participation.[14] The Attorney General's opinion states, generally, that the MULPA does not permit a limited partnership agreement which contains a provision allowing limited partners to take certain actions without concurrence by the general partners.

The Attorney General's opinion was in response to a request from the Director of the Michigan Department of Commerce for an opinion as to whether a limited partnership agreement may provide that the holders of a majority of the outstanding units of the limited partnership interest may, without the necessity for concurrence by the general partner, vote to (a) amend the limited partnership agreement; (b) dissolve the limited partnership; (c) remove the general partner; (d) elect a new general partner if the general partner voluntarily withdraws from the partnership; (e) approve or disapprove of the sale of all or substantially all of the assets of the limited partnership; and

---

8. 323 A.2d at 371 (S. Ct. Pa. 1974).

9. **Plasteel Products Corp. v. Helman**, 271 F.2d 354 (1st Cir. 1959).

10. **Rathke v Griffith**, 36 Wash. 2d 394, 218 P.2d 757 (1950).

11. **Silvola v. Rowlett**, 129 Colo. 522, 272 P.2d 287 (1954).

12. **Delaney v. Fidelity Lease Limited**, 526 S.W.2d 543 (S. Ct. Tex. 1975).

13. **Frigidaire Sales Corp. v. Union Properties, Inc.**, 88 Wash. 2d 400, 562 P.2d 244 (S. Ct. Wash. 1977).

14. The opinion was an unpublished opinion by Frank J. Kelley, Attorney General for the State of Michigan. The opinion was issued to Mr. William F. McLaughlin, Director of the Michigan Department of Commerce.

(f) cancel any contract for services between the general partner or any affiliate of the general partner, without penalty upon 60 days notice. The opinion does not state what consequences would follow if a limited partnership agreement contained provisions of the type described, i.e., whether the valid organization of the limited partnership would be impaired, the limited partners would be subjected to personal liability for the debts and obligations of the partnership or the provisions in question would merely be void and ineffective.

The Attorney General's opinion is based solely upon his interpretation of the various provisions of the MULPA which govern the relationship between limited partners and general partners. The opinion states that limited partners may possess and exercise only the powers statutorily provided to them (i.e. to have the partnership books kept at the principal place of business of the partnership, and to inspect and copy any of such books; to have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs; and to have a court dissolve and wind up the affairs of the partnership).[15]

Two recent Michigan cases cast doubt upon the validity of the Attorney General's opinion. First, in **Multivest Real Estate, Inc. v. MV IV Action Committee,**[16] the Honorable Ralph B. Guy held that although the Attorney General's opinion was entitled some deference, it was certainly not binding on the courts. He went on to state:

> [T]he Court finds the particular problem with attaching much weight to the Attorney General's opinion to be that it simply is not supported by any authority for the conclusion that it has reached.

In addition, Judge Guy held that there is no prohibition under Michigan law against giving limited partners the right to remove the general partners and that the act of voting to remove a general partner by a limited partner would not in and of itself cause the limited partner to be personally liable for the debts of the partnership. However, Judge Guy qualified his holding by cautioning that if as a consequence of the act of removing a general partner, the limited partner assumes some role in the business of the corporation in its day-to-day operations the possibility of liability exists.

In **Oxford Investment Company v Investment Administrators, Inc.,**[17] the Honorable Steven N. Andrews, in concurrence with Judge Guy's opinion, held that "there is no prohibition in Michigan law relative to or amounting to a prohibition on a partnership agreement authorizing the removal of the general partner by a vote of a certain percentage of the limited partners."

---

15. M.C.L. §449.210.

16. United States District Court for the Eastern District of Michigan, Case No. 80-72202, delivered from the bench on December 23, 1980.

17. Oakland County Circuit Court, Case No. 80-214319-CK, delivered from the bench on March 11, 1981.

CURRENT MICHIGAN CORPORATION AND SECURITIES BUREAU POLICY

Limited partnership interests, particularly in real estate limited partnerships, are often sold as securities. As a result, the Attorney General's opinion has created some practical problems for the Michigan Corporation and Securities Bureau (the "Michigan Securities Bureau").

The Michigan Securities Bureau, and the securities bureaus of a number of other states, require registered offerings of real estate limited partnership interests to comply with the Statement of Policy Regarding Real Estate Programs adopted by the North American Securities Administrators Association, Inc. ("NASAA Real Estate Program Guidelines").[18] In addition, the Michigan Securities Bureau has adopted that policy as its own for real estate offerings involving $500,000 or less (or such other amount as approved by the administrator), which are registered by qualification or are granted an exemption order pursuant to Section 402(b)(9) of the Michigan Uniform Securities Act.[19]

Both the NASAA and the Michigan Real Estate Program Guidelines require limited partnership agreements to contain the following voting rights for limited partners:

> B. Voting Rights of Limited Partners. To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the SPONSOR (i.e. general partner), vote to (1) amend the limited partnership agreement, (2) dissolve the PROGRAM, (3) remove the SPONSOR and elect a new SPONSOR, and (4) approve or disapprove the sale of all or substantially all of the assets of the PROGRAM.[20]

The obvious conflict between the Attorney General's opinion and the NASAA and Michigan Real Estate Program Guidelines has resulted in a number of problems for promoters seeking to register, or obtain an exemption order for the sale of, limited partnership interests in Michigan.

First, promoters who attempt to comply with the Attorney General's opinion are required by the Michigan Securities Bureau to give notice to investors that the limited partnership agreement does not give limited partners any voting rights.[21] In addition, potential conflicts of interest between

---

18. The Statement of Policy Regarding Real Estate Programs was adopted by the North American Securities Administrators Association, Inc. on April 15, 1980, and amended March 30, 1982 ("NASAA Real Estate Program Guidelines.")

19. Statement of Policy Regarding Limited and Certain Qualified Offerings of Real Estate Partnerships/Programs issued by the Michigan Corporation and Securities Bureau ("Michigan Real Estate Program Guidelines"); M.C.L. §451.802(b)(9).

20. NASAA Real Estate Program Guidelines, Paragraph VII, B; Michigan Real Estate Program Guidelines, Paragraph VII, B.

21. The requirements of the Michigan Corporation and Securities Bureau were obtained through phone conversations with examiners employed by the department.

the general partners and the limited partners in such offerings must be minimal in order to obtain approval of the offering from the Michigan Securities Bureau. However, when promoters attempt to register or obtain an exemption from registration for these same limited partnership interests in states other than Michigan, they generally face objections from state securities administrators because the limited partnership agreement does not comply with the NASAA Real Estate Program Guidelines. Fortunately, the introductory phrase to the Guidelines — "to the extent the law of the state in question is not inconsistent" — normally enables promoters of Michigan limited partnerships to obtain an exemption in these states from compliance with the voting rights requirements of the Guidelines.

On the other hand, where promoters give limited partners the voting rights required by the NASAA and Michigan Real Estate Program Guidelines, the Michigan Securities Bureau requires a disclosure in the offering circular relating to the risks associated with such rights because of the Attorney General's opinion. In addition, the Bureau requires an opinion of counsel for the limited partnership to the effect that there is a strong likelihood that the inclusion in the limited partnership agreement of voting rights for the limited partners will not render the limited partners personally liable for the debts and obligations of the Partnership. These requirements of the Michigan Securities Bureau are applied to both limited partnerships formed under Michigan law and those formed in jurisdictions outside of Michigan.

The required opinion of counsel, while undoubtedly creating additional work for Michigan lawyers, is a pitfall which has resulted in the delay of registrations submitted by unwary counsel. The opinion given for limited partnerships formed outside the State of Michigan is generally based upon a conflict of laws argument, resulting in the opinion that there is a substantial likelihood that the laws of another state, but not Michigan, would govern the question of the limited liability of the limited partners. The opinion given for Michigan limited partnerships, or for limited partnerships conducting business in Michigan, generally states that there is a substantial likelihood that the mere existence, as opposed to the exercise, of voting rights provided in the limited partnership agreement would not render the limited partners personally liable for the debts and obligations of the Partnership.

THE REVISED ACT

The Revised Act resolves some of the questions regarding the extent to which a limited partner can participate in the management of a limited partnership without becoming liable as a general partner, but leaves other questions unanswered and raises a number of new questions. In addition, the Revised Act makes the Attorney General's opinion obsolete, thereby removing the current conflict between such opinion and the NASAA and Michigan Real Estate Program Guidelines.

Section 302 of the MRULPA provides as follows:

> Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote, with or without the concurrence of the general partners, on a per capita or other basis upon any matter.

While Section 302 appears to broadly permit limited partnership agreements to grant limited partners the right to vote "upon any matter," the prefatory phrase "subject to section 303" severely limits this seemingly broad provision. As a result, Section 302 merely permits a promoter

to include limited partner voting rights in the partnership agreement if such rights would not cause the limited partners to "take part in the control of the business" of the partnership as provided in Section 303. It should be noted that Section 302 statutorily permits limited partnership voting rights to be exercised without the concurrence of the general partners.

Section 303(a) of the MRULPA provides as follows:

> Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of rights and powers as a limited partner, the limited partner takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, the limited partner is liable only to persons who transact business with the limited partnership with actual knowledge of the limited partner's participation in control.

The first sentence of Section 303(a) simply restates the rule of Section 7 of the MULPA. The Commissioner's Comments on Section 303 of the RULPA regarding this first sentence state:

> The first sentence of Section 303(a) carries over the basic test from former Section 7 whether the limited partner "takes part in the control of the business" — in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed.[22]

Except to the extent a limited partner's activities fall within a "safe harbor" provision of Section 303(b), the courts will still be presented with questions regarding the types of limited partner activities which constitute taking part in the control of the business of the partnership. As a result, the contradictory case law which arose under Section 7 of the ULPA (and discussed above) will continue to confront promoters attempting to give limited partners broader rights in the management of the limited partnership than are provided in Section 303(b).

The second sentence of Section 303(a) would appear, by implication, to provide that once a court makes the determination that a limited partner is taking part in the control of the business of the limited partnership, the court should apply one of two tests to determine whether the limited partner should be personally liable for the debts of the limited partnership. The two tests are as follows:

1. If a limited partner's participation in the control of the limited partnership is substantially the same as that of a general partner, unlimited liability may be fixed on the limited partner, regardless of whether or not third parties dealing with the partnership relied on or knew of the limited partner's participation in control.

2. However, if the limited partner's participation in the control of the business is not substantially the same as that of a general partner, the limited partner will be personally

---

22. RULPA §303(a), Official Comment.

liable for the debts of the limited partnership but only as to persons without actual knowledge of the limited partner's participation in control.

The second sentence of Section 303(a) is an attempt to balance the competing interests of the limited partners and the partnership's creditors.[23] While the limited partner would appear to be the primary benefactor of this provision, the provision may have raised more problems than it has resolved.

First, the phrase "substantially the same as that of a general partner" is not further defined or clarified in the RULPA or the MRULPA. Nor do the Commissioner's comments to Section 303(a) provide any guidance as to when a limited partner's activities will cause him to be viewed as exercising control "substantially the same as that of a general partner."

Presumably, a court in attempting to define such phrase would look first to the rights of a general partner as set forth in the MRULPA. Section 403 of the MRULPA provides that a general partner in a limited partnership shall have all the rights and powers of a partner in a partnership without limited partners. Reference to the Michigan Uniform Partnership Act ("MUPA") reveals that partners thereunder have the following rights, among others:

1. Each partner is an agent for the partnership.[24]

2. Each partner may convey property in the partnership name.[25]

3. Each partner may bind the partnership with regard to admissions or representations made by such partner.[26]

While the MUPA provides some guidance as to impermissible powers to be given to limited partners, its provisions are so broad as to leave the question of the permissibility of most powers unanswered. In addition, the use of the word "substantially" in Section 303(a) would seem to indicate that a limited partner could have less than all the powers and duties of a general partner and still be subject to unlimited liability. The absence of relevant case law under Section 303(a) of either the MRULPA or the RULPA makes it difficult to predict the extent to which limited partners may participate in the control of partnership affairs without causing them to be viewed as exercising control "substantially the same as that of a general partner."

Another issue left unanswered by the MRULPA, the RULPA and the Commissioner's Comments to the RULPA, is the extent of the liability of a limited partner who is found to have taken part in the control of the business of a limited partnership. It is unclear whether such limited

---

23. RULPA §303(a), Official Comment.

24. M.C.L. §449.9.

25. M.C.L. §449.10.

26. M.C.L. §449.11.

partner would be liable for all past, present and future obligations of the partnership or merely those obligations arising during the period the limited partner was participating in control. In the situation where a limited partner has been exercising control on a continual basis, the answer appears relatively easy, i.e. the limited partner is liable for all the debts of the limited partnership since he began to exercise control. However, where a limited partner's control activities have been of a very limited nature, the extent of the limited partner's liability is less clear and the parties may ultimately have to turn to the courts for the answer.

Section 303(b) of the MRULPA provides as follows:

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

1. Being a contractor for or an agent or employee of the limited partnership or of a general partner.

2. Consulting with and advising a general partner with respect to the business of the limited partnership.

3. Acting as surety for the limited partnership.

4. Approving or disapproving an amendment to the partnership agreement.

5. Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership.

6. Requesting or attending a meeting of partners.

7. Voting on one or more of the following matters:

   (i) The dissolution and winding up of the limited partnership.

   (ii) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business.

   (iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.

   (iv) A change in the nature of the business.

   (v) The removal of a general partner.

Fortunately, the provisions of Section 303(b) of the MRULPA provide some needed clarity to the question of the activities which limited partners can engage in without fear of losing their limited liability. Paragraph (b) is intended to be a "safe harbor" provision whereby a limited

partner may carry on certain enumerated activities without being deemed to have taken part in the control of the business.[27]

First, it should be noted that the provisions of Section 303(b) are not mandatory, i.e. the granting of such powers to the limited partners is within the discretion of the limited partnership. Secondly, the powers granted to the limited partners do not have a cumulative effect, so that a limited partnership could grant all of the enumerated powers to its limited partners without destroying the limited partners' limited liability. Thirdly, Section 303(c) of the MRULPA provides that merely because a power is not enumerated in Section 303(b) does not mean that the possession or exercise of such power will necessarily constitute participation in control. In cases falling outside the "safe harbor" the test to be applied to the activities is the control test of Section 303(a).

Section 303(b)(1) permits a limited partner to act as a contractor, agent or employee of the limited partnership or a general partner. This provision would appear to follow logically from the language of Section 303(a) since a limited partner, as an agent or employee of a limited partnership, would be controlled by the partnership and would not be in control of the limited partnership.

However, it is possible that a limited partner who acts as an agent of a general partner (i.e. officer, director or general partner of a general partner) could in fact control the general partner, and thereby control the limited partnership. While the language of Section 303(b)(1) would appear to include such situations within its "safe harbor" provisions, it is likely that creditors would challenge a limited partner's limited liability where the limited partner controlled the general partner. The same issue has been raised under the ULPA, with some courts finding that the fact that a limited partner controlled a general partner would not cause the limited partner to lose his limited liability.[28] However, other courts have held that a limited partner who controls a general partner also controls the limited partnership and is personally liable for the debts of the limited partnership.[29]

Section 303(b)(2) permits a limited partner to consult with and advise a general partner regarding the business. Presumably, this section does not permit a limited partner to possess or exercise decision making power, unless otherwise provided in Section 303(b). Permitting limited partners to engage in such activities is in accord with case law under the ULPA.[30] However, Section 303(b)(2) does leave open the question of what constitutes "consult" and "advise" and the question of when a financially or technically influential limited partner's advice actually becomes decision making rather than merely a recommendation or suggestion.

Section 303(b)(3), allowing limited partners to act as sureties for the limited partnership, appears consistent with current law since that activity would not ordinarily result in a limited

---

27. RULPA §303(b), Official Comment.

28. **Frigidaire Sales Corp. v. Union Properties, Inc.**, 88 Wash. 2d 400, 562 P.2d 244 (S. Ct. Wash. 1971).

29. **Delaney v. Fidelity Lease Ltd.**, 526 S.W.2d 543 (S. Ct. Tex. 1975).

30. See note 7, **supra**.

partner participating in the management of the partnership. Similarly, permitting limited partners to request or attend meetings of partners as provided under Section 303(b)(6) would appear to permit limited partners no greater participation in the management of partnership affairs than is otherwise permitted under the MRULPA. Presumably, meetings could be held only to conduct activities permitted under the partnership agreement or for informational purposes. (Section 303(b)(6) is not part of the RULPA.)

The MRULPA additionally permits limited partners to vote with regard to (i) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business[31] and (ii) a change in the nature of the business of the limited partnership.[32] Both of these sections deal with major events and decisions regarding the limited partnership and would probably not have resulted in limited partners becoming viewed as controlling the business of the limited partnership under current law. However, the Revised Act's clarification of these points should resolve remaining doubts.

The remainder of Section 303(b) permits limited partners to engage in nearly all of the activities which the Attorney General's opinion prohibited. Section 303(b)(4) permits limited partners to approve or disapprove amendments to the partnership agreement. Section 303(b)(7)(i) permits limited partners to vote with regard to the dissolution and winding up of the partnership. Section 303(b)(7)(v) permits limited partners to vote on the removal of a general partner. The Attorney General's opinion had specifically prohibited each of these activities.

Section 303(b)(7)(ii) permits limited partners to vote on the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of business, which is substantially broader than the Attorney General's corresponding prohibition. Similarly, the power to approve or disapprove a transaction involving an actual or potential conflict of interest between a general partner and limited partner, which is provided in Section 303(b)(5), is much broader than the Attorney General's prohibition against limited partners cancelling contracts for services between the partnership and a general partner. (Section 303(b)(5) is also not part of the RULPA.)

The only activity prohibited by the Attorney General's opinion which is not specifically permitted under Section 303(b) is the limited partner's right to elect a new general partner if the general partner voluntarily withdraws from the partnership. Similarly, the only voting right specifically required by the NASAA and Michigan Real Estate Guidelines, but not specifically permitted by the MRULPA, is the right to elect a new general partner upon the removal of a general partner.

Section 401 of the MRULPA provides that additional general partners may be admitted as provided in the partnership agreement, or if the partnership agreement does not so provide, upon the written consent of all partners. While Section 401 clearly permits a limited partnership to provide for the admission of additional general partners upon a vote of the limited partners, it does

---

31. MRULPA §303(b)(7)(iii).

32. MRULPA §303(b)(7)(iv).

not clearly protect limited partners possessing or exercising such right from loss of their limited liability. Where all the partners must approve of the admission of additional general partners, since such action is statutorily mandated, there is a strong argument that this power will not affect the limited partners' limited liability. However, it is unclear what effect permitting less than all the limited partners to approve the admission of an additional general partner will have on their limited liability. Under the MRULPA, promoters who permit limited partners to elect additional general partners will still be required to struggle with the question of the effect such power will have on the limited partners' limited liability.

The Attorney General should not have difficulty in opining that a limited partnership agreement may permit limited partners, upon the consent of all the partners, to admit additional general partners. This power is mandated by the statute. Similarly, if the partnership agreement permitted a set percentage of limited partnership interests, without the concurrence of the general partners, to elect additional general partners, the Attorney General should find such action to be permitted since the statute permits such a provision in the partnership agreement.

In any event, the Michigan Corporation and Securities Bureau has indicated that as a result of the adoption of the MRULPA, as of January 1, 1983, it will no longer require disclosures in offering documents regarding the Attorney General's opinion and will no longer require opinions of counsel regarding the effect of limited partner voting rights upon the limited liability of limited partners.

TAX CONSIDERATIONS

While a full discussion of the federal income tax implications of the adoption of Sections 302 and 303 of the MRULPA is beyond the scope of this article, promoters should be aware that the Revised Act raises a substantial question regarding the status of limited partnerships as partnerships for tax purposes.[33]

Under current Treasury regulations, a limited partnership will be treated for tax purposes as a corporation rather than as a partnership if it has more corporate than non-corporate characteristics.[34] According to the Regulations, the six major corporate characteristics which distinguish a corporation from other organizations are: (1) associates, (2) an objective to carry on a business and divide the gains therefrom, (3) continuity of life, (4) centralization of management, (5) liability for corporate debts limited to corporate property, and (6) free transferability of interest.

The adoption of the MRULPA raises the question whether a limited partnership organized under the Revised Act has the corporate attribute of centralized management. The current Regulations provide that a limited partnership subject to a statute corresponding to the ULPA generally does not have centralized management, unless substantially all the interest in the partnership is owned by the limited partners; i.e., even though there may be centralized administration by a general partner, centralization of management is not present if the general partner has a meaningful

---

33. See Sheldon I. Banoff, "Can Tax Practitioners Support the Revised ULPA?", 60 TAXES 97 (1982).

34. 26 C.F.R., Part 301, Treas. Reg. §301.7701-2.

proprietary interest in the partnership. It is unclear under current law whether or not the RULPA is "a statute corresponding to the ULPA."

An amendment has been proposed to the Regulations to provide that all references to the ULPA in the Regulations should also be deemed to refer to the RULPA.[35] Therefore, the same rules dealing with the classification of a limited partnership would be applied to partnerships organized under the ULPA and the RULPA. However, the proposed amendment would provide that if the limited partners had the power to remove the general partner, then, in determining whether the partnership possesses the corporate characteristic of centralized management, the Service will look to all the facts and circumstances involved. The Service's current position on the question is in accord with the Proposed Regulation.

The end result of the proposed amendment is that partnerships formed under RULPA which do not permit the limited partners to remove the general partners (and in which the general partners have a meaningful propriety interest) should have no problem establishing, to the satisfaction of the Internal Revenue Service, that they have the characteristic of centralized management. However, those limited partnerships which permit limited partners to remove the general partners will have a more difficult time establishing such fact. The question of whether or not to grant limited partners the right to remove the general partners may well turn upon the question of how many other corporate characteristics a limited partnership possesses. Promoters may decide not to give limited partners the right to remove the general partners in order to strengthen the status of the limited partnership for tax purposes.

CONCLUSION

The adoption of the MRULPA provisions dealing with the extent to which limited partners may be permitted to participate in the affairs of a limited partnership without losing their limited liability will generally be of great benefit to both limited partners and promoters of limited partnerships.

Limited partners should have greater ability to demand that they be given certain rights to vote on limited partnership affairs. If promoters raise objections to the granting of such rights, limited partners need only point to the "safe harbor" provisions of Section 303(b) to support their position. While the full extent of limited partner voting rights permitted under the "safe harbor" provision is not clear, there are many voting rights thereunder which can clearly be given to limited partners.

Promoters will also benefit from the MRULPA since they should now feel more comfortable in acquiescing to the demands of state securities bureaus and limited partners that the limited partners be permitted to participate in limited partnership affairs. Whereas in the past voting rights for limited partners had been permitted because of the demands of the marketplace, even though there was little or no authority for such position, the MRULPA now gives authority for that position. While the MRULPA answers many questions as to the extent limited partners may participate in limited partnership affairs, it leaves many questions unanswered and raises some new questions. It is likely that promoters will only feel comfortable in permitting limited partners

---

35. Prop. Treas. Reg. §301.7701-2(a)(5).

to exercise the powers enumerated under the "safe harbor" provisions of Section 303(b). They may even feel the need to limit some of those rights because of a lack of clarity in some of the "safe harbor" provisions. Once promoters venture outside the "safe harbor" provisions, they will be forced to rely on prior case law, which is less than clear. In addition, tax considerations may cause promoters to limit the types of powers given to limited partners, especially the power to remove a general partner.

Finally, the MRULPA would appear to have made the Attorney General's opinion obsolete. This should make it substantially easier in the future to register limited partnership interests (or obtain an exemption therefrom) with the Michigan Corporation and Securities Bureau.

GARN-ST. GERMAINE AND DUE-ON-SALE CLAUSES IN MICHIGAN

by
Timothy A. Fusco
Dykema, Gossett, Spencer, Goodnow & Trigg

On October 15, 1982 the Garn-St. Germaine Depository Institutions Act of 1982 ("Garn") became law.[1] This statute, enacted primarily as an aid to the ailing thrift industry, deals with the question of the enforceability of so-called due-on-sale clauses in real estate transactions. In fact, due-on-sale relief is merely one of several types of assistance given to thrifts in this Act. Unfortunately, Garn's treatment of due-on-sale, in an effort to accommodate conflicting political concerns, is reasonably complex, raising a number of unanswered questions. The whole area of the legitimacy of due-on-sale clauses in Michigan has been unsettled for a number of years, and Garn will not totally eliminate the need for even further litigation. Before discussing the due-on-sale provisions, a brief examination of the other major aspects of Garn will be useful.

The primary purpose of Garn is aid to the Nation's thrift institutions. This is accomplished in a number of ways. First, the Federal Savings and Loan Insurance Corporation ("FSLIC") is authorized to assist ailing thrift institutions by purchasing "net worth certificates."[2] These net worth certificates are merely unsecured obligations of the thrift institution, and are purchased by FSLIC with promissory notes in purely paper transactions. Garn specifically provides, however, that the net worth certificates shall be "deemed" to be net worth to the issuing institution for statutory and regulatory purposes. This form of aid is limited to thrifts with a net worth, for regulation purposes, of less than three per cent of total assets, who have incurred losses in the prior two quarters, and whose losses have not resulted from excessive operating expenses or other prohibited activities. The amount of net worth certificates available to a thrift institution varies from 50 to 70 per cent of its losses in a given time period, the amount of assistance increasing as net worth decreases. From the industry's point of view, these certificates, while not providing any additional capital, will reduce the number of forced mergers or involuntary changes in management, remedies being utilized more and more frequently when a thrift is in trouble. Only time will tell whether net worth certificates will give the industry needed breathing room or merely mask the symptoms of its ailments.

Second, Garn gives thrifts new authority to enter into areas previously reserved for commercial banks. Effective immediately, federally chartered thrift institutions (savings and loan associations and savings banks) may accept demand deposits, or checking accounts from entities which have loan or other commercial relationships with the association.[3] Commercial, no-interest, checking accounts have always been a major source of cheap funds for commercial banks. Congress obviously feels federal thrifts should compete for these deposits. To do so, they will have to expand their commercial lending activities. Garn also permits federal thrifts to make secured or unsecured business or commercial loans, even if not real estate related, up to 5% of an association's assets.[4] This percentage increases to 10% on January 1, 1984. Even without the new powers, thrifts have been making real estate related business loans for many years. Commercial borrowers should now anticipate that thrifts will be demanding deposits as part of a loan relationship, whether the loan is real estate related or not. State chartered institutions do not have these powers since Michigan, unlike most other states, has no automatic tying statute permitting state institutions to exercise all powers given to federally chartered institutions.

Garn also deals with the problem of competition with other money market mutual funds. All depository institutions, banks, thrifts, and credit unions, whether state or federal, are authorized,

effective December 15, 1982, to offer customers an account which shall be "directly equivalent to and competitive with" money market mutual funds.[5] No rate limitations apply to this account, although a $2,500 minimum deposit will be required. On the other hand, the interest rate differential of ¼ of 1% thrifts had enjoyed on some accounts is eliminated effective on or before January 1, 1984.[6]

The final aid to the thrift industry in Garn is the due-on-sale provision contained in section 341.[7] This section establishes two set of rules depending upon the nature of the lender originating the loan in question. Federal savings and loan associations are permitted to enforce due-on-sale clauses in all real estate loans with only minor restrictions. Garn answers the question raised by the Supreme Court's decision in **First Fidelity Savings and Loan Association v. De la Cuesta.**[8] In that decision the Court held the regulations of the Federal Home Loan Bank Board dated June 8, 1976 authorizing federal associations to enforce due-on-sale clauses were sufficient to preempt any state law to the contrary. The Court did not decide whether federal institutions could enforce due-on-sale clauses with respect to loans originated prior to the date of the regulation if state law were to the contrary at the time the loan was executed. Garn permits federal associations to enforce even with respect to loans pre-dating the regulations. Other lenders do not receive the same type of blanket approval for exercise of due-on-sale clauses.

Banks, state chartered institutions, and private lenders, may enforce due-on-sale clauses, but only subject to the so-called "window period exception," a provision apparently inserted by the drafters to protect home owners who executed loans relying upon state statutes or court decisions which prohibit enforcement of due-on-sale clauses. Section 341 provides generally that due-on-sale clauses may be enforced by any lender in accordance with the provisions set forth in the mortgage or land contract. This is not true, however, with respect to loans by a non-federal savings and loan association or transfers of such loans made within the so-called window period. The window period is defined as the interval between the date on which a state, by statute, constitutional provision or judicial decision, prohibits the exercise of due-on-sale clauses and the date of enactment of section 341, October 15, 1982. If a given loan was originated, or if a transfer of the property subject to the loan was completed during this interval, a due-on-sale clause cannot be exercised until the expiration of three years following the enactment of section 341, or October 15, 1985. Even then, the clause may not be exercised based upon a transfer prior to October 15, 1985.

A further limitation upon exercise of due-on-sale clauses by non-federal savings and loan associations is the state's right to reimpose restrictions upon such clauses after October 15, 1982 with respect to window period loans. Section 341 provides that a state may by legislative enactment, as opposed to Court decision, subsequent to the date of Garn, pass such regulation of enforcement of due-on-sale clauses with respect to these loans by lenders other than federally chartered banks, savings and loans, or credit unions as it deems proper.[9] If such a statute is adopted, the preemption provisions prohibiting exercise of due-on-sale will apply only to the extent the state so specifies. Any state statute will not, however, affect the absolute rights of federal savings and loan associations to exercise due-on-sale clauses and will not affect enforcement of due-on-sale clauses in loans preceding or following the window period. At least one bill pending in the Michigan House[10] purports to override the due-on-sale preemptions and prohibit exercise of due-on-sale clauses in the case of single family dwellings, unless a lender can show the proposed transfer would impair the security for the mortgage. Even if adopted, this statute would apply only to private lenders and state chartered financial institutions.

In short, federal thrift institutions have an absolute right to enforce due-on-sale in accordance with the terms of the mortgage, note or other contract whatever the date of the transaction. Other lenders can do so if the loan was made prior to commencement of the window period and no transfer occurred during such interval, or the loan was made after the effective date of Garn. With respect to window period loans, a due-on-sale clause can be enforced commencing October 15, 1985 unless Michigan adopts a statute prior to such date reimposing regulation on these loans, or similar regulations are adopted with respect to national banks or federal credit unions. Any legislative enactment would only affect window period loans by lenders other than federal savings and loans, national banks, or federal credit unions, and the legislature cannot impose restrictions on loans either preceding or following the window period.

An important issue then is determining the length and nature of Michigan's window period. A consensus may exist that the window period commences in 1977 when the Court of Appeals decided the case of **Nichols v. Ann Arbor Federal Savings and Loan Association.**[11] In that case, the court held that a due-on-sale clause contained in a residential mortgage could not be enforced because the clause constituted an unreasonable restraint on alienation. In reaching this decision, the court relied upon decisions in three other jurisdictions which had adopted the restraint on alienation theory as a ground for refusing to enforce due-on-sale clauses. The court went on to state that a due-on-sale clause will not be enforced unless the mortgagee can show that the contemplated transfer will impair the security of the mortgage or some other legitimate interest of the mortgagee. The court specifically found that a desire to raise interest rates is not sufficient in and of itself to justify exercise of such a clause at least in situations where the borrower was not aware that a due-on-sale clause could be exercised for such purpose. This is the first decision in which a Michigan appellate court clearly found a due-on-sale clause contained in a mortgage to be unenforceable.[12]

Another aspect of the window period exception which will undoubtedly have to be determined by litigation is the applicability of the window period to commercial as opposed to residential mortgages. The preemption provisions of section 341 apply to all real property loans, that is loans secured by any lien on real property, made by any person or entity including, but not limited to, state and federal institutional lenders.[13] Except for window period loans, due-on-sale restrictions are preempted for all categories of real estate loans made by any lender. The window period exception is only applicable if a state has, by judicial decision or otherwise, prohibited enforcement or exercise of due-on-sale clauses. An argument can be made that if the prohibition is limited to a given category of loans the window period is likewise limited. None of the numerous decisions dealing with due-on-sale in other jurisdictions have made a distinction between commercial or residential loans. Presumably, a due-on-sale clause is just as much a restraint on alienation in the commercial loan situation as in the residential loan. If this were the only issue, it would be hard to argue that an exception exists for commercial loans. The court in **Nichols**, however, left open the question of whether greater disclosure to the mortgagor of the nature of the due-on-sale clause would make enforcement of the clause reasonable.[14] No subsequent decisions have dealt with this issue. An argument certainly is present that even if due-on-sale clauses are not enforceable in the case of relatively unsophisticated residential home borrowers, the same should not be true in the case of a sophisticated commercial loan where the borrower is well aware of the existence of such clauses and their general enforcement in the commercial situation. Adopting this line of reasoning could lead to either general approval of due-on-sale clauses in commercial situations or a requirement that each loan be examined on a case by case basis to determine the sophistication of the borrower and its knowledge of the due-on-sale clause. As noted, further litigation will be necessary to resolve this issue.

Two other aspects of section 341 are worth mentioning. A lender is given the right in any case involving a loan containing a due-on-sale clause which is not eligible for preemption to require that a successor or transferee meet customary credit standards applied to loans of the same nature.[15] If the proposed transferee does not meet these standards, the loan may be declared due and payable if the transfer is made without the consent of the lender. This provision would appear to give lenders the right to require credit information, financial statements and sale documents in the case of any proposed transfer to determine if the transferee is creditworthy. Lenders may also be able to exact guarantees, personal liability or other such concessions as a condition of approving the transfer. Finally, section 341 provides that certain types of transfers will not justify enforcement of due-on-sale clauses.[16] These prohibitions, unlike the window period restrictions, apply to federal savings and loan associations as well as to other lenders. The transfers excluded from due-on-sale enforcement include (a) the creation of junior liens which do not relate to a transfer of rights to occupancy in the property, (b) the granting of a leasehold interest of three years or less not containing an option to purchase, (c) a transfer where the spouse or children of the borrower become an owner of the property, and (d) transfers arising from divorce, legal separation, or similar transactions. An interesting question is whether the restriction on enforcement of due-on-sale clauses based upon the creation of a junior lien will prohibit so-called due-on-encumbrance clauses in commercial mortgage situations. Perhaps this issue, like some of the others raised earlier, will be dealt with by the Federal Home Loan Bank Board which is authorized, in consultation with the Comptroller of the Currency and the National Credit Union Administration Board, to issue rules and regulations and to publish interpretations governing section 341.[17]

In sum, while Garn-St. Germaine's treatment of due-on-sale raises a number of unresolved issues, it also establishes enforcement of due-on-sale as our national policy. With time, and some litigation, the window period problems will be resolved and utilization of due-on-sale will become a permanent part of real estate lending. At a minimum, borrowers can expect due-on-sale clauses to be included in most, if not all, loans executed after October 15, 1982.[18] The real unanswered question is whether approval of due-on-sale, combined with the other forms of relief granted in Garn-St. Germaine, will be sufficient to ease the financial problems of the thrift industry and help commence a revival of the housing industry.

FOOTNOTES

1. Public Law 97-320. All references will be to section numbers of the text of the Act.

2. Title II, entitled "Net Worth Certificates" contains sections 201 and 202. Net worth for regulatory purposes is not the same as net worth under generally accepted accounting principles (GAAP). For example, the FSLIC has recently adopted regulations permitting federal associations to value their home offices at market value, an approach not permitted under GAAP. Other regulations adopting regulatory accounting methods are under consideration. These changes may reduce the use of Net Worth Certificates.

3. Section 312 amending paragraphs (1) and (2) of section 5(b) of the Home Owners Loan Act of 1933, 12 USC 1464(b) ("HOLA").

4. Section 325 amending section 5(c)(1) of HOLA, 12 USC 1464(c)(1).

5. Section 327 amending section 204 of the Depository Institutions Deregulation Act of 1980, 12 USC 3503.

6. Section 326 repealing section 102 of Public Law 94-200.

7. Section 341 is contained in Part C of Title III entitled "Preemption of Due-on-Sale Prohibitions."

8. 458 US _______, 102 S. Ct. 3014 (1982).

9. Section 341(c)(1)(A). The Comptroller of the Currency and The National Credit Union Administration Board may regulate the window period real property loans originated by national banks and federal credit unions. Any such regulations must be adopted before October 15, 1985.

10. HB 5964.

11. 73 Mich. App 163 (1977). The Congress itself took no position with respect to the window period in any particular state. Senator Garn specifically noted while presenting the conference report that ". . . it was not the intent of the legislation to define the window period in any given State." Congressional Record-Senate, September 30, 1982, (Daily Ed.) at §12710.

12. In two earlier decisions, **Pellerito v. Weber**, 22 Mich App 242 (1970) and **Lemon v. Nicolai**, 33 Mich. App. 646 (1971), the Court of Appeals declined to enforce clauses in land contracts restricting assignment without the prior consent of the vendor. The reasoning of these cases can easily be limited to land contract situations, and it is hard to argue they constitute a general prohibition of due-on-sale clauses in the more common mortgage situation. Indeed, if the window period exception is designed to protect the reasonable expectations of makers of real property loans, with respect to assumability, **Nichols** is the first decision which could be deemed to have created a reasonable expectation of non-enforceability with respect to such loans.

13. Sections 341(a)(2) and (3).

14. 73 Mich. App. 173-174.

15. Section 341(c)(2)(A).

16. Section 341(d)(1) to (9).

17. Section 341(f).

18. A possible exception would be Adjustable Mortgage loans where the need to adjust terms upon sale is not so imperative. Even so, the FHLMC/FNMA standard Adjustable Mortgage used in Michigan provides, in addition to the normal due-on-sale clause, that upon transfer the lender may adjust the interest rate, any limitation on interest rate adjustment, or the base index feature.

MICHIGAN'S NEW STATUTE ON MARRIED WOMEN'S CONTRACTUAL CAPACITY: THE END OF COVERTURE?

by
George D. Cameron, III
The University of Michigan

On January 5, 1982, Governor Milliken approved Act No. 216 of the Public Acts of 1981. While this statute received very little media attention and even less public debate, the problems with which it attempts to deal are of great significance to married persons residing in Michigan and to the financial institutions with whom they contract. This article will summarize briefly the pre-1982 legal rules on married women's contractual capacity, and the problems which creditors faced under those rules.[1] It will then discuss the content and implications of the new statute. Finally, it will indicate problems that still may exist, even after the enactment of the statute.

The old common law rule of "coverture," as developed in England and then transplanted to this country, meant that husband and wife were one legal entity.[2] Only the husband, however, had the power to contract and to sue; the wife totally lacked capacity to contract, even with respect to her own property.[3] She could bind her husband in quasi-contract (but not herself) to pay the reasonable market value of "necessaries" furnished for herself, the couple's children, or their home.[4] Nearly every state adopted a married women's property act or a constitutional provision which changed this old common law rule so as to give the married woman substantially the same contractual capacity as her husband. By 1963, Texas and Michigan were the only two states which had not done so, although minor residues of the rule remained in another 10 states.[5] Texas enacted legislation in 1963, thus leaving Michigan as the lone holdout.[6] Amazingly, in this era of women's liberation, there was no popular hue and cry to remove this legal anachronism. Indeed, aside from an occasional article,[7] there seemed to be little awareness that Michigan married women were still subject to this medieval remnant. Creditors, of course, were made painfully aware of the rule's existence when they tried to enforce contracts against married women and their property.[8]

Prior to its latest effort (Act No. 216), the Michigan legislature had passed three statutes which modified the common law coverture rules. An 1855 statute gave the married woman the right to own and control her separate property, and to make contracts with respect to it.[9] A 1911 statute gave her similar ownership and control of her separate income.[10] A 1917 act gave her the power to contract jointly with her husband, but only as to her interest in their jointly-owned property.[11] None of these earlier acts, nor all of them in combination, purported to give the Michigan married woman general contractual capacity, i.e., to give her the same contractual capacity as her husband, or as she had prior to marriage.[12]

Michigan had also adopted Article 10, section 1, of the 1963 Constitution, which read in part: "The disabilities of coverture as to property are abolished." In the 1973 **Kloostra** case,[13] a panel of the Court of Appeals decided, however, that the constitutional provision did not abolish the married woman's **defense** of coverture, i.e., her limited liability for debts incurred jointly by the spouses. The wife was only liable on the joint obligation to the extent of her interest in the joint property; her separate assets and income could not be seized by a joint creditor unless she received the consideration from that transaction herself.[14]

Kloostra illustrates one of the two major anomalies that remained under the Michigan version of coverture: the wife was not personally liable on a joint obligation unless she personally received

the consideration in that transaction, while the husband was held personally liable on such contracts irrespective of who received the consideration. The other strange set of results under the pre-1982 Michigan coverture rules is illustrated in part by the 1966 **Sears, Roebuck** case.[15] Doris Jones opened a Sears charge account, signing her name as "Mrs. Rance Jones." When she defaulted on the payments, Sears tried to collect from her husband Rance, since Doris had no separately-owned assets or income. Another panel of the Court of Appeals held that Sears had no claim against Rance, unless they could prove that he had somehow authorized Doris to open the account as his agent.[16] The 1855 and 1911 statutes authorized Doris to contract with respect to **her** separate property and income, and the 1917 act, to contract **with Rance** with respect to their joint property. No statute, however, gave her any control over Rance's separate property or, more important, over any portion of their joint property **when she acted individually**. If Rance had opened the Sears account, not only would his separate property and income have been available to Sears, but also at least some portion of the jointly-owned property, unless all the co-owned property was held as tenants by the entireties. Thus, in at least two important respects, prior to 1982, a wife did not have the same degree of contractual capacity as her husband.[17]

What does Public Act No. 216 have to say about these problems? It is a very brief statute, consisting of only nine Sections and covering just over one single-spaced page. Section 9 is the repeal section; it repeals the 1855, 1911, and 1917 acts discussed above. Section 1 (1) substantially reenacts the 1855 statute: the married woman can own separate property and contract with respect to it. Section 1 (2) does the same for the 1911 statute: the married woman owns her separate income.

Section 2 authorizes a trustee who holds property for a married woman's benefit to convey it, or the income from it, to her for her separate use.

Section 3 reads in full as follows: "The common law disability of married women to make and enter into a contract is abrogated." This sentence sounds suspiciously like the provision in the 1963 Michigan Constitution. Using the same word — "disability" — to describe what is being "abrogated"/"abolished" opens the door for an interpretation similar to that in the **Kloostra** case: "disabilities" are abolished, but "defenses" are not. This section speaks of the disability "to make and enter into a contract" rather than the "disabilities of coverture as to property," but the drafting here, in the light of the previous **Kloostra** interpretation of similar language, seems particularly inapt.

Section 4 (1) also reaffirms the rule from the 1855 act: a married woman can contract with respect to her separate property, which can be seized to enforce a judgment based upon such contracts. Section 4 (2) reaffirms the principle from the **Sears** case: a husband is not liable on the wife's contract unless he acted as surety, co-signor, or guarantor.

Section 5 approves the result in the **Cardillo** case,[18] by providing that a married woman may act as surety for the debt of another, including her husband, and that her separate property may be seized to enforce such a liability. Similarly, section 6 (1) permits her to pledge or assign her separate property as collateral for the debt of another, including a debt of her husband, and section 6 (2) permits her to enter into a written contract giving a "general guarantee" for the debts of another, including those of her husband. Section 6 thus approves the line of Michigan cases culminating in **Wendland,**[19] which approved such pledges or assignments by married women of their separate property as collateral for the debts of another.

Section 7 reads in full: "A married woman may enter into a written contract jointly or severally with another person." The implications of this section are not completely clear. First, it omits the phrase used in sections 1 (1), 5, 6 (1), and 6 (2): "including her husband." Does this omission imply that a married woman **cannot** enter into a joint and several written contract with her husband? If so, the results seem markedly inconsistent with the rest of the statute. If the legislature did not mean to imply that, why the lack of symmetry among the sections? Second, this section was drastically revised during the legislative process.

As originally introduced by Representative Mary C. Brown, section 7 of House Bill No. 4098 read as follows: "A married woman may enter into a written contract jointly with another person. If the woman signs a contract jointly with another person, the woman shall be jointly and severally liable upon the contract. However, if a married woman signs a contract jointly with her husband, a judgment entered against the husband and wife, or the survivor, shall be satisfied from any of the following, at the option of the husband and wife, or the survivor:

(a) Real estate owned by the husband and wife as tenants by the entirety.

(b) Real estate acquired by either husband or wife as survivor of the other.

(c) Real estate previously owned by husband and wife as tenants by the entirety, in the case of divorce.

(d) Personal property and choses in action owned jointly with right of survivorship.

(e) Separate property of the husband.

(f) Separate property of the wife as described in section 1."

What is the legal significance of this large deletion? Clearly, it eliminates the spouses' power to elect which specific items of property shall be used to satisfy joint judgments. It also seems to provide that the contract controls as to whether the married woman's liability is joint **or** several, since the original bill automatically declared her liability to be joint and several.

Section 8 provides as follows: "A contract relating to property made between persons in contemplation of marriage shall remain in full force after marriage takes place." Perhaps this principle needs restating, given the strange status of Michigan married women, but it does not appear to change prior law.

That is all there is to Public Act No. 216. Does it solve the problems described above and in the previous article?[20] Several potential points remain, which eventually may be decided by the courts.

First, and perhaps most obvious, the statute has no retroactive effect. In deciding **Yazell**, the U.S. Supreme Court noted that Texas had "repealed" its version of coverture "after the events of this case."[21] The Court did not even hint that this legislative action after the date the contract in question was entered into could be applied to an already existing set of obligations. Indeed, it is fairly clear that the Michigan legislature could not have made the statute retroactive even if they had so desired. Although the U.S. Supreme Court did sustain a legislative modification of pre-existing contractual obligations in the **Blaisdell** case,[22] its more recent decision in **Allied Structural Steel**[23]

indicates that such interference is justified only under extreme conditions, which quite clearly do not exist here.

Second, the combined effect of sections 3, 4, 6 (1) and (2), and 7 probably changes the results in the **Kloostra** case, although the rather sloppy draftsmanship may leave some room for argument. Section 3 says that the married woman does have the capacity to enter into a contract. Section 5 says that she may act as surety for another, including her husband. Section 6 (1) says that she may pledge or assign her interest in her separate property as security for the debt of another, and 6 (2) says she may enter into a general guarantee for the debt of another. Section 7 says she may enter into a joint or several contract with another.

Third, none of the sections, as adopted, makes specific mention of the wife's capacity with respect to jointly-owned property. None of them specifically states that a married woman has the same degree of contractual capacity with respect to such property as a single woman or as a married man. As if to reconfirm this omission, Justice Fitzgerald's dissenting opinion in the recent **Morgan** case[24] indicates that the married woman's acts have no effect on property owned by the spouses as tenants by the entireties. Presumably, the pre-1982 rules governing such property will also survive this latest legislative effort. It would also seem that the same arguments could be made as to property owned by the spouses as tenants in common or joint tenants. To the extent that preexisting Michigan law made any distinction in the capacity to contract with respect to co-owned property, that distinction would appear to have survived Public Act 216.[25]

Most supporters of women's liberation, and of legal rationality, will probably hail this new statute as a big step in the right direction — toward legal equality of the married woman. Married women, of course, also need to recognize the fact that they have lost (or probably lost) a very significant legal immunity from personal liability on joint contractual obligations. Most of all, Michigan creditors dealing with married women need to be aware of the potential loopholes in the new act. The courts can presumably clarify any perceived ambiguity in the statute's coverage of the wife's liability on a joint contract. It does appear, however, that further legislation will be necessary in order to make the wife a full legal partner with respect to contracts relating to assets owned as joint tenants or tenants in common.[26] Meanwhile, as always, awareness of the risk is one of the best forms of insurance.

FOOTNOTES

1. For a more complete discussion, see Cameron, **Coverture's Last Stand: The Married Woman's Lack of Contractual Capacity in Michigan**, 8 MICHIGAN REAL PROPERTY REVIEW 75 (1981), and sources cited therein.

2. Blackstone, COMMENTARIES, vol. 1, p. 442; see also, Phipps, **Tenancy by the Entireties**, 25 TEMPLE LAW QUARTERLY 24 (1951).

3. Cameron, **supra** note 1; Phipps, **supra** note 2.

4. In **Sears, Roebuck & Co. v. Jones**, the Michigan Court of Appeals ruled that the trial judge had properly refused to charge the jury on a quasi-contract theory, since the plaintiff's complaint did not include such a count. 139 N.W.2d 899 (Mich. Ct. App. 1966), at 900.

5. **United States v. Yazell**, 86 S. Ct. 500 (1966), at page 503, note 23.

6. **Id.**

7. In addition to Cameron, **supra** note 1, and the sources cited therein, see Peisner, **Gone But Not Forgotten**, 47 MICHIGAN STATE BAR JOURNAL 43 (1968).

8. See, for example, **Sears, Roebuck & Co. v. Jones**, 139 NW2d 899 (Mich. Ct. App. 1966); **City Finance Co. v. Kloostra**, 209 NW2d 498 (Mich. Ct. App. 1973); **National Bank of Rochester v. Meadowbrook Heights, Inc.**, 265 NW2d 43 (Mich. Ct. App. 1978).

9. Act No. 168 of the Public Acts of 1855, M.C.L.A. 557.1-557.5.

10. Act No. 196 of the Public Acts of 1911, M.C.L.A. 557.11.

11. Act No. 158 of the Public Acts of 1917, M.C.L.A. 557.5-557.55.

12. Cameron, **supra** note 1, and cases there cited.

13. **Kloostra, supra** note 8.

14. **Id.**

15. **Sears, Roebuck & Co., supra** note 8.

16. **Id.**

17. Early in 1981, three other Court of Appeals judges reached a result contrary to **Kloostra** in **Michigan National Leasing Corporation v. Cardillo**, 302 NW2d 888 (Mich. Ct. App. 1981). Since these two decisions could not be reconciled, action by either the state Supreme Court or the legislature was necessary to resolve the question. On November 4, 1981, the Supreme Court did grant leave to appeal, but, on plaintiff's motion, reconsidered and reversed its order granting leave on May 18, 1982. The Supreme Court said: "It appearing that this case is not jurisprudentially significant in view of the enactment of 1981 PA 216, we VACATE the order of November 4, 1981, and DENY the application for leave to appeal because the Court is not persuaded that the questions presented should be reviewed by this Court." SC 66680; CR 32-499a.

18. **Cardillo, supra** note 17.

19. **Wendland v. Citizens Commercial & Savings Bank**, 284 NW2d 776 (Mich. Ct. App. 1979).

20. Cameron, **supra** note 1.

21. **Yazell, supra** note 5.

22. **Home Building & Loan Association v. Blaisdell**, 290 U.S. 398 (1934).

23. **Allied Structural Steel Co. v. Spannaus**, 98 S. Ct. 2716 (1978). In light of these clear limitations under the U.S. Constitution on the retroactive application of state legislation to preexisting contracts, the Michigan Supreme Court's terse denial of leave to appeal in **Cardillo, supra** note 17, is all the more mystifying. It may very well be that Public Act 216 adopts the rule of **Cardillo** for future contracts signed by married women to guarantee their husbands' debts. It is hard to see how this new statute can be applied, constitutionally, so as to change the liabilities of all those married women who signed such contracts prior to the enactment of the statute, or why such a case is not "jurisprudentially significant."

It can also be argued, as Cardillo's attorney has done in his motion for reconsideration of the order denying leave to appeal, that Public Act 216 is an unconstitutional attempt to modify Article 10, section 1, of the Michigan Constitution. SC 66680.

24. **Morgan v. Cincinnati Insurance Co.**, 307 NW2d 53 (Mich 1981). Justice Fitzgerald's dissenting opinion contains a thorough examination of the doctrine of coverture, tenancy by the entireties, and marital property rights generally. See also, Townsend, **Creation of Joint Rights between Husband and Wife in Personal Property**, 52 MICHIGAN LAW REVIEW 779 (1954).

25. **Morgan, supra** note 24. Justice Fitzgerald notes: "In Michigan, the husband alone is entitled to possess, use, and manage the entireties property...." As to the effect of earlier married women's property acts, he stated: "Michigan ... took the view that the tenancy by the entireties was not affected by the married women's acts and continued to exist as at common law." Fitzgerald's opinion seems to indicate that sole control by the husband is still the law in Michigan, as to tenancy by the entireties property. The situation is not quite that simple, however. In 1975, Michigan adopted Public Act No. 288, which states: "Sec. 1. A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety."

    If the unity of the spouses' interests in entireties property means that the husband's separate creditors cannot reach any part of it in satisfaction of his separate debts, then neither could the wife's separate creditors, since her rights are equal to his. On the other hand, if prior to 1975, the husband's exclusive right to manage the entireties property meant that his separate creditors could reach the income therefrom, so long as the spouses were both alive and married to each other, then the wife's separate creditors might now have to be given equal access to the income from entireties property. This latter result seems unduly cumbersome and unintended by the legislature, but it is at least an arguable position. See **Bienenfeld, Creditors v. Tenancy by the Entireties**, 1 WAYNE LAW REVIEW 105 (1955).

    For present purposes, it is sufficient to say that Public Act 216 does not make specific mention of entireties property, or any other form of joint ownership that may exist between spouses, and that the cases interpreting prior Michigan married women's statutes have stated that they do not change the spouses' rights with respect to such co-owned property.

26. Further legislation might also be called for in response to Judge Fox's invitation in his opinion affirming a recent Bankruptcy Court decision. The debtor husband, after filing a voluntary Chapter 7 petition, tried to exempt entireties property (in which the spouses had an equity of over $2 million). Judge Fox disapproved of the potentially unfair result under the Bankruptcy Act of 1898, which did exclude such property from the estate of the spouse in bankruptcy, but which then granted him or her a bankruptcy discharge, thus discharging the other spouse as well on all joint debts. The spouses were both discharged on all joint debts, and they kept all entireties property: Judge Fox noted that several courts had stayed the discharge so as to permit joint creditors to get joint judgments, and to satisfy those judgments out of the entireties property, prior to the bankruptcy discharge. According to Judge Fox, the 1978 Bankruptcy Code includes entireties property in the debtor's estate. He adopted a rule which permits the Bankruptcy Court to administer entireties property for the benefit of all the spouses' joint creditors. He recognized that the extent of the exemption for entireties property is a matter for state law, and that "states can enact statutory exemptions which would protect entirety property from joint creditors." **Michigan National Bank — Michiana v. Chrystler**, MFIR, Volume 3, No. 6, pp. T-1 - T-8 (W.D. Mich. 1982).

PRESERVATION TAX CREDITS: EVERYBODY WINS

by
Janet L. Kreger
Historic Preservation Coordinator, Michigan History Division, Michigan Department of State

For years, historic preservationists in the United States have had nothing but architectural beauty, historical significance, irreplaceable building materials, and unparalleled craftsmanship to sell. Such qualities infrequently commanded a high dollar value in a real estate market captivated by a "new-is-better" philosophy. Today, however, preservationists have the Economic Recovery Tax Act of 1981 (ERTA) on their side. Signed by President Reagan on August 13, 1981, the act makes sweeping changes in the federal tax treatment of investments in real estate, the most significant of which is a 25 percent investment tax credit on rehabilitation expenses for historic buildings.

In Michigan, the Michigan History Division of the Department of State is the State Historic Preservation Office (SHPO) and is responsible for promoting the preservation tax incentives provided through ERTA. Each state and territory has a SHPO which processes the paperwork involved in qualifying a project for the investment tax credit and offers its recommendations for final project review at the federal level by the National Park Service of the U.S. Department of the Interior. Historians, architectural historians, and historical architects on SHPO staffs across the nation are pleased by the economic viability now afforded their preservation projects and are fascinated with the mix of investors who suddenly have "discovered" preservation.

The Investment Tax Credit

The new investment tax credit, or ITC, became effective January 1, 1982. It offers a 25 percent credit for the certified rehabilitation of certified historic structures when a straight-line method of depreciation of rehabilitation expenditures is elected. The ITC is appealing, of course, because it is deducted from the amount of taxes owed, in contrast to deductions that merely reduce the amount of income subject to taxation. The owners of certified historic structures are eligible when expenditures are incurred on certified rehabilitations. The owner of a rehabilitated historic building leased and used by a tax-exempt organization or governmental unit may also be allowed the ITC. A lessee may be eligible for the ITC for certified rehabilitation expenses if, on the date the rehabilitation is completed, the remaining term of the lease is at least fifteen years.

An eligible applicant not only qualifies for the 25 percent ITC for a certified rehabilitation project but, for the time being, also is exempt from the adjustment to basis rule. This rule, which applies to non-certified projects, requires that tax credits be subtracted from the total rehabilitation costs before computing the amounts to be depreciated. In the case of certified rehabilitations, however, the full amounts of rehabilitation expenditures qualify for depreciation. This incentive for preservation activities will be somewhat reduced for property placed in service after December 31, 1982. Under an additional tax act passed by Congress on August 19, 1982, and signed by President Reagan the following week, any taxpayer claiming the 25 percent ITC must, for depreciation purposes, reduce the basis in the building by one-half the value of the ITC.

Certifiable Buildings

The 25 percent ITC for certified rehabilitation is available to both depreciable non-residential and residential buildings. The depreciation status of a building is determined by its use when

placed in service after rehabilitation. For example, a non-depreciable, single-family residence can become an eligible property if it is rehabilitated into a depreciable, income-producing professional office. Note that a certified historic building owned and occupied in part by a taxpayer qualifies for the credit prorated according to the portion of the building that is income-producing.

In addition to being depreciable, a building must be certified by the U.S. Secretary of the Interior as "historic." This certification is available to three categories of properties. The first two categories include buildings listed on the National Register of Historic Places, the federal government's official list of buildings, structures, sites, objects, and districts significant in American history, architecture, engineering, or archaeology at the local, state, or national levels. Included are 1) buildings individually listed on the National Register and 2) contributing buildings within historic districts listed on the National Register. The third category includes contributing buildings within historic districts recognized under Michigan Public Act 169 (1970), the enabling legislation for the establishment of local historic districts through local historic district ordinances. Michigan has over 8,000 properties within the first two categories of eligibility and an additional 1,700 properties within the third.

Because not every old building is "historic," the responsibility of establishing whether or not a building falls within one of the three categories of eligibility rests with the applicant. To determine if a property is individually listed on the National Register of Historic Places, the applicant can refer to the comprehensive listing found in the issue of the **Federal Register** published the first Tuesday of February of each year. To determine if a property is in a National Register historic district, the applicant can first use the **Federal Register** to learn if the district is listed and then contact the Michigan History Division to determine if the building contributes to that district. To determine if a property is in a locally designated historic district established under one of Michigan's thirty-five local ordinances, the applicant can first contact the local unit of government to find out if an ordinance and district exist and then contact the History Division to determine if the ordinance and district are certified and if the building contributes to its district.

If a building does not fall within one of the three categories of eligibility, responsibility for seeking historic designation status rests with the applicant. To avoid wasting time and effort on ineligible properties, applicants are urged to consult first with the Michigan History Division. The Division supplies applicants with Building-Structure Inventory Forms that are used to summarize briefly the historical and architectural significance of buildings. When an applicant returns a completed form, the professional staff of the Division reviews the property for its potential eligibility and advises the applicant in writing of its opinion.

The History Division staff may suggest that an individual nomination to the National Register be prepared for the property. In this case, the applicant can either hire a professional architectural historian to produce the nomination or ask the Division's staff to prepare it. If the latter option is chosen, the applicant's request is placed at the end of a substantial backlog of pending nominations. If the Division's staff indicates that the building stands within a historic district that should be nominated to the National Register, the applicant will need to work with others in the community on the district designation. Again, either a consultant can be hired to produce the nomination or a nomination request can be added to the History Division's backlog. Lastly, the Division's staff may indicate that the building stands within a locally designated historic district established under a Public Act 169 historic district ordinance. In this case, the applicant must work with others in the community and the local unit of government to have the local ordinance certified by the National

Park Service for purposes of the tax incentives, to have the local historic district similarly certified, and to determine, in consultation with the History Division, which buildings contribute to the district.

Qualified Rehabilitations

A qualified rehabilitation is any certified building that 1) has been substantially rehabilitated, 2) was in use prior to beginning the rehabilitation, and 3) retains in place at least 75 percent of the existing external walls. To qualify for the 25 percent ITC as a substantial rehabilitation of a building, rehabilitation expenditures within a twenty-four month period must exceed the greater of either the taxpayer's adjusted basis in the property (i.e. the cost of the building, plus capital improvements, minus depreciation) or $5,000. The act provides an alternate sixty month period to meet the substantial rehabilitation test in the case of projects that reasonably may be expected to be completed in phases set forth in architectural plans completed before rehabilitation begins. Note that according to the proposed regulations of the Internal Revenue Service, the ITC can be taken only when a building is placed in service after a rehabilitation meeting the twenty-four month rule. For a sixty month rehabilitation, however, the taxpayer may be able to take a portion of the ITC annually during the five year period rather than wait until the building is placed in service.

The prior use test requires that a building must have been operated as a building in the past and before the beginning of rehabilitation. This requirement is designed to rule out structures that are converted into buildings as part of the rehabilitation process as in the case of a railroad car or ship that is converted into a restaurant. The external wall test requires that 75 percent of the existing external walls be retained in place during the rehabilitation. Designed to assure that the maximum amount of historic building fabric is maintained during rehabilitation, this last test also makes ineligible for the ITC any expenditures attributable to enlargement of a building even though 25 percent or less of the existing external walls may have been removed for the construction.

Besides meeting these three tests for certifiable rehabilitation, a project must have an overall design consistent with the historic character of the building and, if the building is located within a historic district, the historic character of the district. This requirement is met if the rehabilitation is in keeping with the U.S. Secretary of the Interior's "Standards for Rehabilitation," ten general preservation guidelines established by the federal government to assure consistent rehabilitation quality (see Appendix). Expenditures that meet the "Standards" and that qualify for the ITC are, according to the IRS, ". . . amounts properly chargeable to a capital account for property, additions, or improvements which have a recovery period of fifteen years, and in connection with the rehabilitation of a qualified rehabilitated building." Ineligible expenditures include 1) costs of the acquisition of a building or land, 2) costs of enlargement, 3) expenditures made without the election of straight-line depreciation, 4) expenditures for non-certifiable rehabilitation, and 5) expenditures for interior furnishings or exterior land improvements.

Other Benefits

Four additional benefits may be available to property owners involved in the rehabilitation of historic structures. First, the ITC may be carried back for three years and forward for fifteen. The extended carry-over period is significant given the write-offs allowed under the Accelerated Cost Recovery System that is the cornerstone of ERTA. The second benefit applies to property owners whose certifiable rehabilitations began prior to the passage of ERTA in 1981. If their expenditures on substantial rehabilitations occurred both before and after December 31, 1981, their pre-1982

expenditures qualify under the provisions of the Tax Reform Act of 1976 and the Revenue Act of 1978 while their post-1982 expenditures qualify under ERTA. If expenditures on rehabilitations that are not substantial occurred both before and after December 31, 1981, the tax benefits allowed under the 1976 and 1978 acts apply to both pre- and post-1982 expenditures.

The third benefit deals with tax preference and recapture. Because neither the ITC nor the elected straight-line method of depreciation are classified as items of tax preference, taxpayers investing in qualified rehabilitations are not subject to the minimum tax penalty. The premature disposal of a qualified rehabilitated building, however, may result in recapture of a portion of the ITC. Generally, if a qualified rehabilitated building is held by the taxpayer no longer than five years after the rehabilitation is completed and the building is placed in service, the ITC is not recaptured. If the property is disposed of after a period of less than one year after it is placed in service, 100 percent of the ITC is recaptured. For properties held between one and five years, the ITC recapture amount is reduced by 20 percent per year.

The fourth benefit applies to taxpayers who decide that even though their buildings cannot be certified as "historic," they still are worthy of rehabilitation. For them, ERTA includes a 15 percent ITC for buildings at least thirty years old and a 20 percent ITC for buildings at least forty years of age. As with certified historic buildings, a qualified building must be substantially rehabilitated, be used as a building prior to the beginning of rehabilitation, and retain in place at least 75 percent of existing external walls. The taxpayer must be aware, however, that these 15 and 20 percent credits are limited to non-residential industrial and commercial buildings used for income-producing purposes and that the adjustment to basis rule applies.

Certification Paperwork

As with all government programs, paperwork exists. However, the paperwork needed to qualify for the 25 percent ITC for the certified rehabilitation of a certified historic structure is not unmanageable. Basically, the certification process has two parts, each with its own application form. The Part I Certification is used to certify that a building is historically significant. The application form requests information on the historical and/or architectural importance of the property, information on the historic district if it stands in one, photographs, and a map. The applicant submits Part I to the Michigan History Division where it undergoes a review of no longer than forty-five days. The Division then forwards the application, along with its recommendations, to the National Park Service for final review. Again, the review takes no longer than forty-five days. If an individual or district property's designation status is not yet in order but the property owner is reasonably confident that within thirty months of taking the benefits for the first time that status will be secured, he or she may submit Part I for preliminary certification. With preliminary certification, the taxpayer can proceed with confidence that he or she is working with a property potentially eligible for tax benefits.

The Part II Certification is used to certify that the rehabilitation is in keeping with the U.S. Secretary of the Interior's "Standards for Rehabilitation." The Michigan History Division urges that Part II materials always be submitted for preliminary certification before plans and specifications for a rehabilitation project are completed and work begun. This preliminary review of plans can help eliminate problems in meeting the "Standards." The form itself requests general information about the building's construction, an estimated cost figure for the entire project, and a detailed description of individual work items accompanied by photographs. Whether submitted for preliminary

or final certification, the Part II Certification Form is reviewed by the History Division in no more than forty-five days. The Division then submits the application and its recommendations to the Park Service where a final review of no longer than forty-five days is conducted. The taxpayer should note that Parts I and II certification materials may be submitted simultaneously.

An applicant may submit a certification application for a project that has both its designation status in order and its rehabilitation complete. In this case, the National Park Service reviews the project against the Secretary's "Standards" and, if satisfied that the guidelines are met, notifies the owner in writing that the project has been deemed a certified rehabilitation. The owner of a project that has received a Part II preliminary certification receives a form titled "Request for Certification of Completed Rehabilitation Work." When the property's designation status is in order and all rehabilitation work is complete, the taxpayer submits this form with photographs of the completed project. Again, the Park Service uses the "Standards" for its final review and notifies the property owner in writing if the project has been deemed a certified rehabilitation. The taxpayer should beware of placing a rehabilitated building in service and taking the ITC before receiving written notification of final certification. If both Part I and Part II Certifications are not secured, the taxpayer is responsible for repayment of the ITC.

In Closing...

The Economic Recovery Tax Act reflects the desire of Congress and the Reagan Administration to promote reinvestment in America's historic buildings, commercial and industrial districts, and older residential neighborhoods. The 25 percent ITC for certified historic buildings, available in concert with an exemption from the adjustment to basis rule and a lenient recapture policy, is the most beneficial tax treatment allowed for real estate under the amended Internal Revenue Code. Use of the ITC allows everyone to win: investors receive an attractive tax break while preservationists have their first real chance to promote America's irreplaceable historic buildings as solid investments.

APPENDIX
The Secretary of the Interior's STANDARDS FOR REHABILITATION and Guidelines for Rehabilitating Historic Buildings

"Rehabilitation means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values."

The following "Standards for Rehabilitation" shall be used by the Secretary of the Interior when determining if a rehabilitation project qualifies as "certified rehabilitation" pursuant to the Tax Reform Act of 1976, the Revenue Act of 1978, and the Economic Recovery Tax Act of 1981. These standards are a section of the Secretary's "Standards for Historic Preservation Projects" and appear in Title 36 of the Code of Federal Regulations, Part 67 (formerly 36 CFR Part 1208).

1. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

CHAIRMAN'S REPORT

by
William B. Dunn
Clark, Klein & Beaumont

At this writing, we are two months into the 1982-83 business year, and I am pleased to report that there is much activity. As has been said many times, the work of the committees is the backbone of our Section, and the truth of this statement has become even more apparent. I would like to share with you the activities of some of the Section's committees, and their plans for the future.

The Committee on Seminars, Workshops, and Meetings continues its traditional pattern of carrying out its activities through the individual member's assumption of responsibility for specific programs. Steve Dawson continues to oversee the joint Section — ICLE programs, helping to develop topics and selecting speakers. Sandra Meyer coordinated the Section's program at the Annual Meeting of the State Bar in Cobo Hall. Marvin Rosen was responsible for the extremely successful Seventh Annual Summer Conference at Mackinac Island. Chairman James Tervo is working with William T. Meyers to develop the Sixth Annual Winter Conference at Disney World and, with Richard Rabbideau, has developed the Homeward Bound series for 1982-1983. Nyal Deems of Grand Rapids is at work on the development of an outstate Homeward Bound Program. Assignments of responsibility for the 1983 Summer Conference, the 1983-1984 Homeward Bound series and the 1984 Winter Conference will be made shortly. A schedule of all planned programs appears elsewhere in the **Review**.

The Section Council was asked by the Commissioners of the State Bar for a report and recommendation for action with respect to House Bills 5964 and 5965. The matter was brought to Council and to the Committee on Mortgages and Related Financing Devices and Security Interests for discussion. H.B. 5964 proposed to amend the usury law to forbid "non-amortizing" loans, to forbid exercise of the due-on-sale clause, and to override federal preemption of state usury ceilings. H.B. 5965 proposed to amend the statute governing foreclosure of residential mortgages by advertisement to require a default in making periodic payments before the advertisement procedure could be used; to require the published notice of sale to **contain** an appraisal of the property made by an independent appraiser; to require that the bid price be "reasonably related" to the appraised value; and to change the redemption period from six months to one year.

Council voted unanimously to oppose both bills. Following a committee meeting attended by nineteen members, eight members of the committee (chaired by Marvin Rosen) prepared memoranda dealing with separate issues presented by these bills, which were then furnished to the Section Chair to assist in his preparation of the report to the Commissioners. Recognition goes to Mark Rabidoux, Victor T. Miller, Richard J. Rankin, Michale K. Anspach, Timothy Button, Samuel M. Thompson, Thomas H. Thornhill and Frederick A. Petz for preparing material on this subject.

A meeting of the Committee on Title Examination, Assurance and Conveyancing was held at State Bar headquarters on Friday, November 12, 1982 at 9:30 a.m. Fourteen dedicated, serious members from all over the state, including the Upper Peninsula, were in attendance. Topics currently assigned for research and reporting include: Aliens; Air Rights; Joint Ventures; Riparian Rights; Covenants and Restrictions in Deeds; Hardrock Minerals and Timber; Recording Memos of Land Contracts and Leases. Other topics will be taken up from suggestions hereby solicited.

Please direct your communications to the Chairman: Thomas C. Simpson, 100 West Long Lake Road, Suite 210, Box 541, Bloomfield Hills, Michigan 48013.

The Committee on Oil, Gas and Natural Resources (chaired by James Brown) met in Lansing in October, with twelve of its twenty members in attendance. This committee will be producing a series of articles for publication in the **Review**, in spring, 1983, on the following subjects: "Selected Oil and Gas Lease Provisions"; "Common Oil and Gas Terms"; "The Dormant Minerals Act and Other Michigan Statutes Affecting Oil and Gas Interests in Leases"; "Pooling and Spacing"; "Common Oil and Gas Title Problems." An issue of the **Review** containing all of these articles would be an invaluable addition to the library of practitioners in this state and elsewhere.

The Residential Transactions Committee (Phil Seaver, Chairman) proposes to prepare and publish a series of standard clauses, for insertion in residential preliminary sales agreements, dealing with common problems which arise in the preparation of such agreements. The committee has been at work on this project for a year, and we look forward to its publication.

One of the projects of the Committee on Bankruptcy and Creditor's/Debtor's Rights in Real Property Transactions is the publication of case notes dealing specifically with bankruptcy cases affecting real estate transactions. It is hoped that some of the principal case developments in this area can be brought, more or less regularly, to the attention of the membership of this Section through the **Review**. The Committee Chairman and Vice-Chairman, Wallace Handler and Larry Rochkind, are seeking to develop a Chapter 13 seminar to be given at various locations around the state in the first half of 1983.

The Committee on Commercial Leasing and Management of Real Estate (Michael Maddin, Chairman) has identified a series of topics for articles to be published in the **Review**, the first of which will deal with the subject of insurance provisions in commercial leasing, with particular emphasis on the disposition and use of insurance proceeds upon casualty loss. A subcommittee has been established to monitor legislation in this area, and the committee desires to work with the Section CLE Committee in producing programs for both the Homeward Bound Series and Summer Conference of the Section in this topically rich area.

At the Annual Meeting two years ago, Council voted to prepare and file on behalf of the State Bar an amicus brief in an appropriate zoning case to present a position in opposition to the midsatisfactory use of the **Turkish** and **Zaagman** decisions. At that time, the approval of State Bar offices was given for this project. It is possible that the appropriate case for this brief is now pending in the courts, and the Section's Committee on Governmental Regulation of Land Use (co-chaired by Gerald Fisher and Jack Shumate) will be involved in the preparation of this brief.

The Committee on Construction Law (Thomas Roach, Chairman) is looking toward development of appropriate clauses in construction contracts to reflect the impact of the Bankruptcy Code; preparation of an article for the **Review** on the topic of risks and benefits in the use of construction management and fast track methods by public bodies, charitable organizations and small enterprises; participation in a Homeward Bound program on arbitration; and a study of the feasibility of some contract recommendations for the "small" construction project, particularly a contract usable for residential custom building.

The foregoing is merely a partial listing of some of the highlights that have developed or are developing clearly. I look forward to reporting further concerning the activities of the other committees of the Section in future issues, as well as reading about, hearing of, or watching the product of all committee activities. The work of three of our "committees" proceeds very obviously, but with less notoriety than deserved: Robert McCullen who, as Chairman of a Committee on State Legislation, reports monthly to Council and regularly in this **Review** on the progress of legislation in the Michigan legislature; Joseph Lloyd who reviews and prepares case briefs on decisions of interest to real property lawyers from the Michigan appellate courts for each issue of the **Review**; and George Siedel, our peerless Editor, who with great care and dedication produces this **Review** of which we are all very proud.

THE LEGISLATIVE SCENE

USURY STATUTE EXTENDED AGAIN

The expiration date of the usury statute applicable to mortgages and land contracts (MCLA 438.31c, MSA 19.15(1c)) has been extended to March 1, 1983. A substitute for Senate Bill 403 which so extended the statute passed on December 1, 1982, without immediate effect, and again on December 2, 1982, with immediate effect. It was then approved by the Governor on December 3, 1982, as Act 322 of the Public Acts of 1982.

The U.S. Congress has enacted the Garn-St. Germain Depository Institutions Act of 1982, PL 97-320. The Act was signed by the President on October 15, 1982. Section 341 of the Act preempts State law to permit enforcement of due on sale clauses. The Act also contains authority for alternative rate mortgages.

ACTION ON PREVIOUSLY REPORTED LEGISLATION

HB 4187 — Permits the department of social services to take a lien for certain emergency need payments — 11-22-82, 2nd reading with substitute.

HB 5378 — Revises the exemptions from property tax for certain airports — 11-23-82, general orders.

HB 5405 — Provides certain farmers with deferments of payment and collection of summer property tax — 11-23-82, general orders with amendment(s).

HB 5526 — Provides for incorporation of villages as cities when an entire township lies within village boundaries — 11-23-82, general orders.

HB 5632 — Eliminates certain fees of plat boards at the option of the county board of commissioners — 11-23-82, 3rd reading with substitute.

HB 5700 — Limits the authority of the mobile home commission to mobile homes in parks — 11-18-82, 2nd reading with amendment(s).

HB 5801 — Repeals the act creating the state boundary commission — 11-23-82, 2nd reading with substitute.

HB 5881 — Facilitates purchase of existing housing, provides for rehabilitating rental housing, and establishes certain restrictions on the transfer of ownership of rental properties involving the Housing Development Authority — 11-9-82, Committee on State and Veterans' Affairs.

HB 5917 — Establishes seasonal mobile home parks restricted to partial year operation and provides for regulation of the same by the Mobile Home Commission — 11-22-82, 2nd reading with substitute.

HB 5932 — Authorizes special assessments for operating and maintaining retention basins and allows the imposition, if approved by the municipality, as a condition of final plat approval — 9-16-82, 2nd reading with amendment(s); 11-10-82, amended; 11-18-82, 3rd reading with amendment(s); 11-23-82, passed.

HB 5956 General amendments to the solid waste management act — 9-15-82, 3rd reading with amendment(s); 11-10-82, amended, passed; 11-11-82, Committee on Commerce.

HB 6001 Increases the filing fees for plat approval and dedicates those funds for use in administering the subdivision act — 9-21-82, 2nd reading with substitute; 11-16-82, 3rd reading with substitute; 11-18-82, defeated; 11-23-82, vote reconsidered, passed.

HB 6039 Removes sex based differentiations in the statute with respect to joint conveyances of real property — 9-21-82, 3rd reading, 11-9-82, passed; 11-11-82, Committee on Judiciary.

HB 6040 Removes sex based differentiations in the statute with respect to divorce and separate maintenance property settlements — 9-21-82, 3rd reading; 11-9-82, passed; 11-11-82, Committee on Judiciary.

HB 6065 Increases the licensing fees for electricians and electrical contractors — 9-15-82, 2nd reading; 11-10-82, 3rd reading; 11-16-82, passed; 11-17-82, Committee on State and Veterans' Affairs.

HB 6123 Provides general amendments to the hazardous waste management act — 11-11-82, 2nd reading with amendment(s); 11-23-82, 3rd reading with amendment(s), amended, passed.

SB 403 Extends expiration date on usury statute applicable to mortgages and land contracts — 11-23-82, rules suspended, 3rd reading with substitute; 11-23-82, substitute adopted, passed; 11-23-82, Committee on Corporations and Finance; 12-1-82, passed; 12-2-82, passed with immediate effect; 12-3-82, approved by Governor as Public Act 322.

SB 600 Deletes the sunset date on the toxic substance control commission act — 9-28-82, referred to Conference Committee.

SB 819 Regulates surface coal mining and reclamation operations — 10-12-82, approved by Governor as Public Act 303.

SB 882 Provides for development and regulation of mobile home parks in multiple family zoning districts — 11-9-82, Committee on State and Veterans' Affairs.

SB 955 Regulates how close neighborhood bars can be to each other — 11-10-82, general orders with amendment(s).

SB 958 Allows assessment disputes to be filed within 30 days after receipt of a tax bill if the final SEV exceeds the tentative equalized value by 5% or more — 11-23-82, general orders with amendment(s).

SB 979 Revises the procedures and requirements relating to the duties of certain officials in regard to collection of property tax — 11-23-82, general orders with substitute.

Submitted by: Robert J. McCullen
Chairman, Committee
on Legislation

RECENT DECISIONS
by
Joseph Lloyd
Lloyd, Rutzky & Dodge

CASE NOTES

EYDE CONSTRUCTION COMPANY v TOWNSHIP OF MERIDIAN, ____ Mich App ____, ____ NW2d ____ (No. 59054, September 23, 1982)

Zoning referendum — false statements

The plaintiff brought an action seeking to set aside the results of a referendum election rezoning its property. The plaintiff alleged that two days before the election the defendants (including the township and local citizens' organizations) had made and published erroneous statements concerning the effect of a "yes" vote on the referendum. Action was brought under MCLA 600.4545, MSA 27A.4545 which permits bringing an action "whenever it appears that material fraud or error has been committed at any election ... at which there has been submitted any constitutional amendment, question or proposition to the electors ..." The trial court granted summary judgment for the defendants and the plaintiff appealed.

The Court of Appeals affirmed the trial court. In the absence of a specific statutory requirement, the court declined to regulate the statements in campaign literature in light of possible conflicts with the First Amendment. The court noted, moreover, that making false campaign statements is a misdemeanor only if the true name of the author of the statements is not disclosed. In the instant case, the names of the authors were disclosed. The court declined to impose a stricter standard concerning referendums than the legislature had provided for statements concerning political candidates.

GROH v BROADLAND BUILDERS, INC, ____ Mich App ____, ____ NW2d ____ (No. 53056, October 6, 1982)

Implied Warranty — exemplary damages — mental anguish

The plaintiff claimed damages for mental anguish resulting from alleged breach of contract and breach of implied warranty in the sale of a new home. The plaintiff made no claim of illness or physical injury arising out of the alleged breach of contract and implied warranty, and there were no factual allegations from which the jury might infer that damages for mental anguish were within the contemplation of the parties at the time of entering into the contract.

The Court of Appeals held that the claim of damages due to mental anguish must be dismissed. In doing so the court noted that the parameters for recovery of such damages should be no broader than those well established parameters under theories of contract and tort. The court took note of cases from other jurisdictions which would call for a different result, but declined to make such a rule in Michigan.

STROUD v GLOVER, INC, ____ Mich App ____, ____ NW2d ____ (No. 55021, October 6, 1982)

Brokers — Commissions — Rights of Terminated Salesperson

The plaintiff, a licensed real estate salesperson, had an employment contract with the defendant broker that allowed the contract to be terminated by either party "upon notice given to the other." The broker terminated the salesperson while certain sales, brought about by the salesperson, were still pending. The closings occurred after termination, and the sales agent sought her contractual share of the commissions.

The question before the court was whether the salesperson was entitled to the share of the commissions that would have been hers if she had remained employed by the defendant. The district and circuit courts granted judgment for the plaintiff on the ground that the broker had breached the contract by not providing the salesperson with "reasonable" notice of termination. The Court of Appeals affirmed, noting that the term "upon notice" was ambiguous and that ambiguities in the contract must be construed against the party preparing same. The concurring opinion of Judge Penzien (sitting by assignment) is particularly interesting in that he would have held that the commission was earned and owed once the listing was obtained and the sales commission paid to the broker, irrespective of whether the employement of the sales agent continued through the date of closing.

MOORE v COUNTY OF ST. CLAIR, ____ Mich App ____, ____ NW2d ____ (No. 58268, October 7, 1982)

Easements — Municipalities — Liquidated Damages

The defendant municipality contracted for a sewer project which would pass under the plaintiff's property. The plaintiff was reluctant to grant a right of way, and agreed only after typing into the easement a provision that called for the property to be restored within 90 days of completion of the work, and failing same, the plaintiff could restore the property at the county's expense "or penalize the county $25.00 per day for each day over 60 days that the work was not completed to the owner's satisfaction." The sewer was installed and after a delay of 820 days, the property was restored to its proper condition.

Two questions were before the Court. The first was whether a provision typed into the easement constituted an agreement between the parties. It was argued that the easement agreement was nowhere signed by the municipality. The counter argument was that by recording the easement, the municipality had accepted an offer of contract. The trial court held that there was a contract as a matter of law. The Court of Appeals ruled that the existence of an agreement was a question for the jury and remanded the case for trial on that single issue.

The second question before the Court was whether the provision for liquidated damages was valid and enforceable or whether it was intended as a penalty. The trial court held that the provision was enforceable and the Court of Appeals affirmed. The question of the enforceability of the provision was a question of law, and not related to the intentions of the parties. The Court of Appeals analyzed in detail the bases on which such provisions may be enforced and held that on the facts of the case the provision was valid. The Court further applauded the plaintiff's foresight in providing such a penalty, noting that it was "gratified by the prospect that at least one set of victims of an unresponsive bureaucracy may not go uncompensated for their troubles."

J & I SERVICE CORPORATION v WASH WAGON OF MICHIGAN, INC., ____ Mich App ____, ____ NW2d ____ (No. 58800, October 18, 1982)

Mechanic's liens — Lessor's responsibility

The plaintiff leased space to the defendant for operation of a truck washing facility. The tenant contracted for the renovations necessary to operate his business. The work was performed, but the contractor was not fully paid. The tenant soon went out of business. The contractor put a lien on the property and attempted to collect from the landlord the balance owed him. The case came before the courts in an action to quiet title.

The Court of Appeals ruled on two issues. The first was whether the landlord could properly be charged for repairs done under contract with the tenant. It was held on the facts of the case at bar that the lease did not require the repairs, and the tenant was not acting as the agent of the landlord. The lien, therefore, could not properly be enforced. The second issue before the court was whether sending a statement of account and a lien was substantial compliance with the statute's required notice of intention to claim a lien. The Court of Appeals held that "substantial compliance" with the statute was not sufficient. Since the mechanic's lien law was in derrogation of common law, strict compliance was required. Judgment for the landlord, therefore, was affirmed.

SECTION NEWS

About the authors:

Thomas S. Vaughn is a magna cum laude graduate of Georgetown University (B.S. 1977; J.D. 1980). He is an associate with the law firm of Dykema, Gossett, Spencer, Goodnow & Trigg, and practices as part of that firm's Corporation and Commercial Law Section.

Timothy A. Fusco is a partner in the law firm of Dykema, Gossett, Spencer, Goodnow & Trigg, in the Bloomfield Hills office of the firm. Mr. Fusco received his Bachelor of Arts degree from Colgate University where he was elected to Phi Beta Kappa and his Juris Doctor degree **cum laude** from the University of Michigan where he was an editor of the **Michigan Law Review**. Mr. Fusco is a member of American Bar Association Committees on Savings and Loan Associations and the Freedom of Information Act. He has lectured at ALI-ABA, PLI and ICLE programs on real estate-related topics, and is the author of numerous articles and publications. Mr. Fusco served as a Lieutenant in the Navy Judge Advocate General Corps from 1972-1975.

George D. Cameron, III is currently Professor of Business Law at the Graduate School of Business Administration, University of Michigan, where he received the First Annual Student Award for Teaching Excellence earlier this year. He previously taught at Eastern Michigan University, where he was the Chairman of the Faculty Senate, and at Cleary College. He is past president of the Tri-State Business Law Association, an Associate in the Center for Russian and East European Studies at the University of Michigan, and a member of the Michigan Bar. He holds the B.A. and M.A. degrees from Kent State University and the J.D. and Ph.D. from the University of Michigan. He has recently co-authored **Business Law: Text and Cases**, and is the author of **The Soviet Lawyer and His System**, and several journal articles.

Janet L. Kreger is a Historic Preservation Coordinator for the Michigan History Division of the Department of State. She received a B.A. in American History from the University of Michigan in 1972. Following two years working as a Community Development Representative for the Ohio Area Office of the U.S. Department of Housing and Urban Development, she enrolled in the Architecture School of Columbia University to earn a M.S. in Historic Preservation and Restoration in 1976. Ms. Kreger has worked at the Michigan History Division since the Fall of 1976 and regularly writes articles for non-legal audiences on the legal and legislative aspects of preservation activities.

REMAINING 1982-1983 CONTINUING LEGAL EDUCATION SCHEDULE

"HOMEWARD BOUND" CONTINUING LEGAL EDUCATION PROGRAMS

RESIDENTIAL LEASES —
Presented by David S. Snyder of Snyder & Handler, PC
January 18, 1983 Northfield Hilton

SPECIAL BANKRUPTCY PROBLEMS —
Presented by Stanley B. Bernstein of Honigman Miller Schwartz & Cohn, Peter A. Nathan of Hertzberg, Jacob & Weingarten and Louis P. Rochkind of Jaffe, Snider, Raitt & Heuer, PC
February 15, 1983 Northfield Hilton

WHAT THE LAWYER SHOULD KNOW ABOUT THE PROCESS OF CONSTRUCTION OF A COMMERCIAL BUILDING —
Presented by Richard E. Rabbideau of Dykema, Gossett, Spencer, Goodnow & Trigg
March 15, 1983 Hotel Pontchartrain

THE NEW MICHIGAN UNIFORM LIMITED PARTNERSHIP ACT —
Presented by Joel S. Adelman of Honigman Miller Schwartz & Cohn
April 19, 1983 Northfield Hilton

THE REAL ESTATE PARTNERSHIP —
Presented by Maurice S. Binkow of Honigman Miller Schwartz & Cohn
May 17, 1983 Northfield Hilton

USE OF ARBITRATION —
Presented by Thomas A. Roach of Donovan Hammond Ziegelman Roach & Sotiroff, PC
June 21, 1983 Northfield Hilton

SECTION CONFERENCES

1983 Winter Conference — February 23-26, 1983 Walt Disney World

1983 Summer Conference — July 13-16, 1983 Grand Traverse Hilton

ICLE SCHEDULE

January 1983 — Construction Liens Update

March 1983 — Real Estate Closings

May 1983 — Condemnation Law and Practice

1983 PUBLICATION SCHEDULE

ISSUE	SECTION COMMITTEE	PERSON RESPONSIBLE	DUE DATE
SPRING (March)	Title Examination, Assurance and Conveyancing	Thomas Simpson	January 1, 1983
	Public Financing	Dennis Neiman	
	Legislation	Robert J. McCullen	
	Oil, Gas and Natural Resources	James R. Brown	
	Commercial Leasing and Management of Real Estate	Michael Maddin	
	Title Standards	John R. Baker	
SUMMER (June)	Construction Liens	Richard Pennings	April 1, 1983
	Construction	Thomas Roach	
	Residential Transactions	Philip K. Seaver	
	Federal Tax Aspects of Real Estate Transactions	Jeffrey Miro	
	Zoning and Use, Land Sales Regulation	Gerald A. Fisher	
	State and Local Taxation	Samuel McKim	
FALL (September)	Continuing Legal Education	James Tervo	July 1, 1983
	Real Estate Legal Practice Methods	Peter Nathan	
	Condemnation	Walter Mason	
	Condominiums, PUDs and Cooperatives	William K. Van't Hof	
	Retiring Chairman's Report	William Dunn	
WINTER (December)	Environmental Law and Energy	Joseph M. Polito	October 1, 1983
	Legal Forms	Robert Wartell	
	Bankruptcy, Debtor/Creditor Rights	Wallace Handler	
	Partnerships, Joint Ventures and other Investment Vehicles	Joel Morris	
	Mortgages and Related Financing Devices and Security Interests	Marvin Rosen	
	New Chairman's Report		

CUMULATIVE ARTICLE INDEX

ABSTRACTS OF TITLE vs. INSURANCE — WHICH SHOULD YOU RECOMMEND TO YOUR CLIENT? — by Allen E. Priestley — August, 1974, p. 3.

ACTIONS TO QUIET TITLE UNDER MICHIGAN LAW — by Samuel J. Behringer, Jr. — February, 1975, p. 16.

AN ANALYSIS OF THE CONSOLIDATED MORTGAGE DECISION — by Thomas L. Griem — April, 1977, p. 14.

AN ANALYSIS OF MICHIGAN'S NEW USURY STATUTES — by James Marshall — June, 1980, p. 86.

ANALYSIS OF SUBDIVISION CONTROL ACT OF 1967 — by Joseph J. Goluban — August, 1978, p. 2.

APPLICATION OF CHANGES IN COST RECOVERY AND REHABILITATION CREDITS UNDER THE 1981 ECONOMIC RECOVERY TAX ACT TO A REAL ESTATE PROJECT — by Michael J. Brenner and Mark L. Robinson — October, 1982, p. 215.

THE BUILDER'S TRUST FUND ACT — by Andrew A. Paterson, Jr. — December, 1976, p. 3.

THE BUILDER'S TRUST FUND ACT — REVISITED — by Andrew A. Paterson, Jr. — February, 1979, p. 22.

CHECKLIST FOR PROCEEDINGS BEFORE MICHIGAN TAX TRIBUNAL — by Leo Goldstein and Donald M. Lansky — August, 1978, p. 35.

CLARIFICATION OF DOWER RIGHTS UNDER THE REVISED PROBATE CODE — by Ralph Jossman — April, 1981, p. 29.

CLOGGING THE EQUITY — by John C. Murray — October, 1981, p. 132.

CONDOMINIUM DEREGULATION IN MICHIGAN — by James P. Babcock and Jeffrey R. Jones — August, 1982, p. 157.

CONDOMINIUMS: HASSLE OR CASTLE — by Earl I. Sherman — December, 1980, p. 172.

COVERTURE'S LAST STAND: THE MARRIED WOMAN'S LACK OF CONTRACTUAL CAPACITY IN MICHIGAN — by George D. Cameron, III — June, 1981, p. 75.

DORMANT MINERAL ACT HELD CONSTITUTIONAL — by Allen E. Priestley — June, 1981, p. 80.

THE EFFECT OF THE AUTOMATIC STAY PROVISIONS OF THE BANKRUPTCY REFORM ACT OF 1978 ON THE STATUTORY RIGHT OF REDEMPTION — by Wallace M. Handler — October, 1982, p. 211.

ENFORCEABILITY OF DUE-ON-SALE CLAUSES: THE NICHOLS AND KEMPF DECISIONS — by Stephen G. Palms — April, 1977, p. 2.

EXEMPTIONS FROM FEDERAL REGISTRATION FOR REAL ESTATE LIMITED PARTNERSHIPS — by Sheldon P. Winkelman and C. Leslie Banas — December, 1977, p. 20.

EXPANDED APPLICATION OF BUILDER'S TRUST FUND ACT — by Stanley M. Weingarden — April, 1980, p. 46.

FARMLAND AND OPEN SPACE PRESERVATION ACT — Act 116, P.A. 1974 — by Dennis A. Conway — February, 1975, p. 8.

FEDERAL PREEMPTION OF STATE USURY CEILINGS UNDER PUBLIC LAW 96-161 — by Robert H. Janover — June, 1980, p. 76.

FIRST MORTGAGE INTEREST RATE ON RESIDENTIAL REAL PROPERTY IN MICHIGAN — by Patrick D. Hanes — August, 1982, p. 169.

FIXTURES, FILINGS AND REAL ESTATE MORTGAGES UNDER THE 1972 AMENDMENTS TO THE UCC — by Asher Rabinowitz and Stanley B. Bernstein — April, 1978, p. 2.

THE FOLLIES OF MODERN ARCHITECTURE — by Peter Blake — August, 1975, p. 17.

FORFEITURE UNDER LAND CONTRACTS: TO POSSESS OR NOT TO POSSESS — by Alan M. Oravec — February, 1981, p. 2.

GARN-ST. GERMAINE AND DUE-ON-SALE CLAUSES IN MICHIGAN — by Timothy A. Fusco — December, 1982, p. 275.

A GUIDE TO THE SECURITY DEPOSITS ACT OF 1973 — by Harold D. Hood — October, 1974, p. 9.

HIGHLIGHTS OF THE NEW MICHIGAN CONDOMINIUM ACT — by Essel W. Bailey, William T. Myers and Robert L. Nelson — June, 1978, p. 2.

IMPACT OF BANKRUPTCY REFORM ACT ON REAL ESTATE MORTGAGES — by Peter A. Nathan and Stuart E. Hertzberg — April, 1979, p. 2.

IMPACT OF NORTHRUP AND DOW ON FORECLOSURE BY ADVERTISEMENT — by George E. Pawlowski — April, 1977, p. 11.

INDEPENDENT PROBATE — by Ralph Jossman — April, 1979, p. 10.

INTERPRETATION: RULES IMPLEMENTING HOME PURCHASE CREDIT — July, 1975, p. 73.

THE INTERRELATION BETWEEN THE FEDERAL AND MICHIGAN LAND SALES ACTS — by Duane E. Burgess — June, 1979, p. 2.

AN INTRODUCTION TO TIME-SHARING CONDOMINIUMS UNDER THE MICHIGAN CONDOMINIUM ACT — by Mark S. Keegan — August, 1982, p. 164.

A JUDICIAL CHALLENGE TO STATUTORY FORECLOSURE — by James W. Draper — June, 1974, p. 4.

KROPF REVISITED: SOMETHING NEW IN MICHIGAN LAW — by Avern Cohn — December, 1974, p. 13.

KROPF v. CITY OF STERLING HEIGHTS: A CHANGE IN JUDICIAL REVIEW OF ZONING — June, 1974, p. 13.

THE LAND CONTRACT CONDOMINIUM PURCHASER — THE DISENFRANCHISED OWNER — by John A. Stevens — February, 1982, p. 3.

LAND TITLE STANDARDS UPDATE — by Andrew Cooke — February, 1977, p. 2.

LANDLORD-TENANCY PROCEEDINGS — by David S. Snyder — December, 1974, p. 17.

LANDLORD-TENANT LAW IN DETROIT: THE COURT AND LEGAL AID — by Ramsey A. Gregory and Lavail Hull — August, 1974, p. 7.

THE LANDLORD'S LIABILITY FOR INJURIES ON THE PREMISES — by James Marshall — August, 1981, p. 108.

THE LAW OF FUTURE ADVANCE MORTGAGES AND THE USE OF LETTERS OF CREDIT IN FINANCING THE CONSTRUCTION OF CONDOMINIUMS — by William S. Fambrough — December, 1979, p. 2.

THE LAW OF PREMISES LIABILITY — by James Marshall — December, 1977, p. 27.

THE LAWYER'S JOB AT A REAL ESTATE CLOSING — by Norbert J. Podgorski — August, 1974, p. 2.

LEGAL RATES OF INTEREST — by Dick Philleo — July, 1975, p. 10.

LIMITED PARTNERSHIP REAL ESTATE SYNDICATIONS — SECURITIES LAW COMPLIANCE — by Lawrence S. Schultz — October, 1975, p. 7.

LOW-INTEREST MORTGAGES THROUGH LOCAL MUNICIPALITIES — by Charles L. Burleigh, Jr. — December, 1977, p. 2.

MAKING CLAIMS ON TITLE POLICIES — by Alan A. Knox — August, 1981 — p. 119.

MECHANIC'S LIEN LAW UPDATE — by Robert S. Bolton — June, 1977, p. 2.

MECHANIC'S LIEN LAW UPDATE — by Robert S. Bolton — October, 1978, p. 11.

MECHANIC'S LIENS AND RESIDENTIAL BUILDERS' LICENSES — by Gary A. Trepod — April, 1980, p. 52.

METES AND BOUNDS DESCRIPTIONS — by John S. Hoag — December, 1975, p. 7.

THE MICHIGAN HOMEOWNERS' ASSOCIATIVE AND ARCHITECTURAL CONTROL — by William J. Perrone — February, 1979, p. 2.

THE MICHIGAN LAND SALES ACT: A NEW ERA OF VENDEE PROTECTION — by Kenneth W. Schmidt — August, 1974, p. 13.

MICHIGAN LAND TITLE STANDARDS — by Myron Winegarden — August, 1975, p. 13.

MICHIGAN LAND TITLE STANDARDS: 1978 SUPPLEMENT — by Ralph Jossman — February, 1978, p. 2.

MICHIGAN SOIL EROSION AND SEDIMENTATION CONTROL ACT OF 1972 — by Edward B. Stulberg — February, 1975, p. 12.

MICHIGAN STATUTORY INTEREST RATE CEILINGS IMPOSED BY STATE LAW — February, 1982, p. 10.

THE MICHIGAN TRUTH-IN-RENTING ACT — by Edward C. Dawda — April, 1979, p. 20.

MICHIGAN'S NEW CONSTRUCTION LIEN ACT — by Robert S. Bolton, Patrick D. Hanes, A. Deane Malaker, Peter A. Nathan, Richard W. Pennings and Stanley M. Weingarden — April, 1982, p. 41.

MICHIGAN'S NEW STATUTE ON MARRIED WOMEN'S CONTRACTUAL CAPACITY: THE END OF COVERTURE? — by George D. Cameron, III — December, 1982, p. 280.

THE MOBILE HOME: PROBLEMS WITH ITS RECOGNITION AS A VALID HOUSING SOURCE — by Geoffrey L. Neithercut — December, 1975, p. 14.

MORE ON MECHANIC'S LIENS — by G. Norman Gilmore — August, 1977, p. 5.

NEW TITLE STANDARDS — by Ralph Jossman — February, 1980, p. 9.

1978 DECISIONS BY THE COURT OF APPEALS AND MICHIGAN TAX TRIBUNAL AFFECTING ASSESSMENTS OF REAL PROPERTY — by Michael B. Shapiro — August, 1979, p. 4.

1979 TAX TRIBUNAL DECISION — by Michael B. Shapiro — August, 1980, p. 108.

OFFERING LIMITED PARTNERSHIP INTERESTS UNDER THE NEW MICHIGAN PRIVATE OFFERING EXEMPTIONS — by Joel J. Morris — February, 1980, p. 2.

OREGON vs. MICHIGAN — by Avern Cohn — December, 1975, p. 7.

OUTLINE OF MECHANIC'S LIEN LAW IN MICHIGAN — August, 1976, p. 4.

PENDING LEGISLATION REGARDING MICHIGAN'S MECHANIC'S LIEN LAW — by Richard W. Pennings — April, 1980, p. 38.

POINT SYSTEM — by John A. Scott — December, 1974, p. 19.

THE POINT SYSTEM — by Frank S. Sengstock — October, 1974, p. 1.

PRESERVATION TAX CREDITS: EVERYBODY WINS — by Janet L. Kreger — December, 1982, p. 286.

PROPOSED AMENDMENT TO CHAPTER 32, REVISED JUDICATURE ACT (MCL SECTION 600.3201 et seq.) RELATIVE TO PROVIDING NOTICE AND OPPORTUNITY FOR HEARING PRIOR TO FORECLOSURE BY ADVERTISEMENT — by William B. Dunn — August, 1975, p. 7.

PRO-RATING TAXES — by Frank S. Sengstock — February, 1975, p. 1.

PRORATION OF TAXES — by Frank S. Sengstock — April, 1975, p. 37.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 — by William B. Dunn — April, 1975, p. 1.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 — UPDATED — by William B. Dunn — July, 1975, p. 23.

REAL ESTATE TRANSACTIONS UNDER THE REVISED PROBATE CODE — by Edward C. Dawda — February, 1980, p. 13.

REAL PROPERTY ASSESSMENTS: SIGNIFICANT LEGISLATION AND DECISIONS IN 1976 — by John R. Baker — June, 1977, p. 25.

REAL PROPERTY LAW 1981 (PART I) — by Allen Schwartz and Sally S. Harwood — October, 1981, p. 137.

REAL PROPERTY LAW 1981 (PART II) — by Allen Schwartz and Sally S. Harwood — December, 1981, p. 179.

REAL PROPERTY LAW, 1981-82 — by William B. Dunn and Edward C. Dawda — October, 1982, p. 189.

RECENT DECISIONS BY MICHIGAN TAX TRIBUNAL AND COURT OF APPEALS AFFECTING ASSESSMENTS OF REAL PROPERTY — by Michael B. Shapiro — August, 1978, p. 41.

RECENT ZONING ENABLING LEGISLATION: A BEGINNING WITH PROMISE — by Gerald A. Fisher — October, 1979, p. 9.

REGULATION OF THE REAL ESTATE PROFESSION IN MICHIGAN — by George J. Siedel, III — June, 1982, p. 124.

REJECTION OF LAND CONTRACT AS EXECUTORY CONTRACT IN BANKRUPTCY PROCEEDINGS OF VENDOR — by Stephen A. Bromberg — February, 1979, p. 20.

REPORT OF THE SUBCOMMITTEE OF THE REAL PROPERTY SECTION ON PROPOSED REVISIONS TO MICHIGAN STATUTORY FORECLOSURE OF MORTGAGES LAW — July, 1975, p. 13.

A RESPONSE TO KROPF — by Avern Cohn — June, 1974, p. 13.

REVENUE ACT OF 1978: EFFECT UPON INDEXING REQUIREMENTS OF FEDERAL TAX LIENS — by Richard H. Schloss — August, 1979, p. 2.

THE REVENUE ACT OF 1978: TAX CHANGES FOR HOMEOWNERS, REAL ESTATE INVESTORS AND FARMERS — by Fred W. Brenner and L. Fallasha Erwin — October, 1979, p. 21.

REVISION OF TAX LIEN CHAPTER OF THE TITLE STANDARDS — by Ralph Jossman — August, 1977, p. 13.

SALE OF HUD PROJECTS — "TRANSFER OF PHYSICAL ASSETS" — by Jefferson F. Riddell — April, 1981, p. 24.

THE SECURITY DEPOSITS ACT OF 1973 — by James M. Szkrybalo — October, 1974, p. 7.

SECURITY INTERESTS IN "FIXTURES" UNDER THE 1978 AMENDMENT TO THE MICHIGAN UNIFORM COMMERCIAL CODE — by Gary A. Taback — December, 1978, p. 11.

SELF-HELP: AN INTRUSION INTO THE TENANT'S RIGHTS — by Lavail Hull — April, 1975, p. 17.

A SHORT ESSAY ON DOWER'S ERODING FOUNDATION — by Roger A. Petzke — October, 1977, p. 2.

SOLAR EASEMENTS UNDER HB 4083 AND HB 4127 — by Deane Malaker — June, 1980, p. 66.

SOME CONSIDERATIONS IN DRAFTING AN OFFER TO PURCHASE — Aiken — August, 1974, p. 5.

SOME MORE THOUGHTS ON PRORATION — (LETTERS TO EDITOR) — July, 1975, p. 2; October, 1975, p. 34.

STATUS OF WILLIAMS AND WORKS, INC. v. SPRINGFIELD CORPORATION, ET. AL. — by James W. Batchelor — April, 1980, p. 55.

SUBDIVISION CONTROL AT THE CROSSROADS — by Jack D. Shumate — October, 1979, p. 17.

SYNDICATIONS AND OTHER AREAS OF REAL ESTATE FINANCING IN THE 1980's — by Craig Hall — December, 1981, p. 189.

SYNDICATIONS OF REAL ESTATE INVESTMENTS IN MICHIGAN — by Joel J. Morris — December, 1978, p. 2.

TAX CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE — April, 1975, p. 30.

TAX DELINQUENCY — by Russell E. Prins — December, 1981, p. 170.

THE TAX TRIBUNAL — by Richard J. Sullivan — July, 1975, p. 3.

THE TIME PRICE DIFFERENTIAL: A BOND CLAIMANT'S VEHICLE FOR RECOVERY OF SERVICE CHARGES — by Robert R. Nix, II — June, 1982, p. 121.

TIME SHARE CONDOMINIUMS — by Gary J. McInerney — December, 1981, p. 164.

A TITLE INSURER LOOKS AT THE CONSTRUCTION LIEN ACT — by Deane Malaker — June, 1981, p. 42.

TURKISH AND THE FUTURE — by Michael H. Feiler — October, 1980, p. 142.

U.S. SUPREME COURT DENIES CERTIORARI IN MICHIGAN DORMANT MINERAL ACT CASES — by Allen E. Priestley — June, 1982, p. 139.

VENDOR'S LIABILITY FOR PHYSICAL DEFECTS — by William F. Nern — August, 1977, p. 2.

VOTING RIGHTS FOR LIMITED PARTNERS UNDER MICHIGAN'S REVISED UNIFORM LIMITED PARTNERSHIP ACT — by Thomas S. Vaughn — December, 1982, p. 261.

WHY NEW HOUSES COST TOO MUCH — by Arthur M. Watkins — August, 1975, p. 15.

WILLIAMS & WORKS v. SPRINGFIELD CORPORATION REVERSED — by James W. Batchelor — August, 1980, p. 111.

ZAAGMAN AND TURKISH: HAS REZONING BECOME IMPRACTICAL? — by Stephen A. Bromberg — October, 1979, p. 2.

ZONING LITIGATION: APPROACHES AND PREPARATION TECHNIQUES — by Stephen A. Bromberg — October, 1978, p. 2.