

Public Policy Position

**HB 6048, HB 6050, HB 6060, HB 6062, HB 6063, HB 6067, HB 6069,
HB 6072, HB 6077, HB 6079, HB 6081, HB 6085, HB 6095, HB 6096, and
HJR T**

The Real Property Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,362 members. The Real Property Law Section is not the State Bar of Michigan and the position expressed herein is that of the Real Property Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Real Property Law Section has a public policy decision-making body with 17 members. On September 16, 2020, the Section adopted its position after a discussion and vote at a scheduled meeting. 17 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Support with Recommended Amendments

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Explanation:

Real Property Law Section policy position statement in support of HB 6048, HB 6050, HB 6060, HB 6062, HB 6063, HB 6067, HB 6069, HB 6072, HB 6077, HB 6079, HB 6081, HB 6085, HB 6095, HB 6096.

The goal and effect of these bills would be to avoid unnecessary confusion and possible litigation that may arise from Michigan statutes, primarily with respect to real property, that created or preserved distinctions between how men and women may own and transfer property. The bills would do so by simply removing gender references from those statutes.

All of these provisions also relate to the control and ownership of property by a married couple. The holding of the U.S. Supreme Court in *DeBoer v Snyder*, that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully performed in another state, would appear to require a married couple who are of the same sex be permitted to hold property as tenants by the entirety, or to otherwise deal with their property in ways that the gender references in current statute do not recognize.

Leaving the existing statutory language in place would simply serve to create confusion for some time and give rise to unnecessary disputes and litigation. Recording a deed does not alone have any legal significance. Rather, that title becomes an issue if challenged by the heir of a co-tenant, for example, or by a creditor of one co-tenant. This legislation would preclude those kinds of disputes.

There is language in six of the bills that are not clear or appear to change substantive law in ways that are not intended. It is recommended that the Section support the bills with the changes proposed in the attachment.

Proposed changes to bills as introduced

HB 6050 eliminates separate subsections, MCL 552.101 and 552.102, for husband and wife and provides gender-neutral references to provisions in judgments of divorce: page 2, lines 1 and 2:

(1) Each judgment of divorce or judgment of separate maintenance shall determine all rights of the ~~wife~~ **spouse** in and to the proceeds of any policy ...

Instead of “the spouse,” it seems clearer to say “each spouse.”

(1) Each judgment of divorce or judgment of separate maintenance shall determine all rights of ~~the wife~~ **each spouse** in and to the proceeds of any policy ...

HB 6067 provides gender-neutral references in the statute providing for payment to the survivor when property held by the entirety is sold on land contract or with a mortgage to the sellers, MCL 557.81. The revisions appear to suppose that in all cases there will be both a separate note and a mortgage. It is not clear whether this revision is part of the substantive revision or simply a style change made by the bill drafter. Although no longer generally used, there are mortgage forms that evidence both the debt and the mortgage, and the reference should be restored by amending page 2, lines 9 and 10, in gender-neutral terms to say:

secured by a mortgage on ~~said the land, payable to husband and wife,~~ **payable to the spouses,** the ~~said debt together with all and interest thereon,~~ **on the debt ...**

HB 6079 would substitute gender-neutral references in the Revised Judicature Act provisions regarding spousal privilege, judgment liens, release of a wife’s interest on a sale or on partition, and bankruptcy exemptions. There are three drafting issues where the proposed language using “spouse” makes it hard to know which spouse has the power to waive the privilege. There is also a substantive question concerning the provision on release of a wife’s interest to her husband before sale and subsequent payment for the interest.

Page 2, lines 14 and 15, MCL 600.2162, would be revised to say:

(1) In a civil action or administrative proceeding, a ~~husband shall~~ **spouse may** not be examined as a witness for or against his ~~wife or her~~ **spouse** without ~~her~~ **the spouse’s** consent ...

To be clearer, it should say:

(1) In a civil action or administrative proceeding, a ~~husband shall~~ **married individual may** not be examined as a witness for or against his ~~wife or her~~ **spouse** without ~~her~~ **the spouse's** consent ...

The proposed change at page 2, lines 19-22:

(2) In a criminal prosecution, a ~~husband shall~~ **spouse may** not be examined as a witness for or against his ~~wife or her~~ **spouse** without ~~his~~ **the spouse's** consent, ~~or a wife for or against her husband without her consent,~~ except as provided in subsection (3).

For clarity, the section should read:

(2) In a criminal prosecution, a ~~husband shall~~ **married individual may** not be examined as a witness for or against his ~~wife or her~~ **spouse** without ~~his~~ **the spouse's** consent, ~~or a wife for or against her husband without her consent,~~ except as provided in subsection (3).

On page 3, lines 6-9 as proposed would read:

(f) In a case in which the ~~husband or wife~~ **spouse** is a party to the record in ~~a suit, an~~ action, or proceeding if the title to the separate property of the ~~husband or wife~~ **spouse** called or offered as a witness, or if the title to property derived from,

For clarity, the provision should read:

(f) In a case in which ~~the husband or wife~~ **a married individual** is a party to the record in ~~a suit, an~~ action, or proceeding if the title to the separate property of the ~~husband or wife~~ **spouse** called or offered as a witness, or if the title to property derived from,

HB 6081 provides a gender-neutral reference to the section of the real property statutes that provide exceptions to the statutory presumption against joint tenancy, MCL 554.44. Page 1, lines 1-5 provide:

Sec. 45. ~~The preceding section shall~~ **Section 44 does** not apply to mortgages, nor to devises or grants **any of the following:**

(a) **A mortgage.**

(b) **A devise or grant** made in trust, or made to ~~executors,~~ **a personal representative,** or to ~~husband and wife,~~ **a spouse.**

This revision is wrong, and the section should be changed to say:

(b) A devise or grant made in trust, or made to executors, a personal representative, or to husband and wife. Individuals who are married to each other.

You need two spouses to have tenancy by the entirety. It also seem clearer to make sure they are married to each other.

HB 6085 would amend the Transfer Tax Act, MCL 207.505, to provide gender-neutral provisions for conveyances creating or disjoining a tenancy by the entireties. The proposed change, page 3, lines 2 and 3, would provide:

(i) Conveyances from a ~~husband or wife~~ **spouse to his or her spouse** or ~~husband and wife~~ **both spouses** creating or disjoining a

It would be clearer and more in keeping with the other amendments to say:

(i) Conveyances from a ~~husband or wife~~ **married individual to his or her spouse** or ~~husband and wife~~ **both spouses** creating or disjoining a

HB 6096 would amend the act repealing Michigan’s brief affair with community property by substituting gender-neutral references, MCL 557.253. The difficulty here, as with some of the other proposed amendments, is that the use of “spouse” without any limiting modifier makes it unclear which spouse is acting. In this case, the confusion is caused by the LSB stylebook which calls for eliminating “such” in all places and substituting “the.” “Such” would be helpful substantively here. Page 2, lines 27-29 and page 3, lines 1-4 would say:

executed by the party making the ~~same claim~~ in the manner required for the execution of deeds, and ~~shall be~~ filed in the office of the register of deeds for the county in which the spouse, by whom, or in whose behalf, the ~~same claim~~ is made resides at the time of the filing ~~thereof, or, in the event that such~~ **if the** spouse ~~shall have~~ **has** died, for the county in which ~~such~~ **the** spouse resided at the time of death. ~~In the event that such~~ **If the** notice of claim . . .

It would be clearer to say:

executed by the party making the ~~same claim~~ in the manner required for the execution of deeds, and ~~shall be~~ filed in the office of the register of deeds for the county in which the spouse, by whom, or in whose behalf, the ~~same claim~~ is made resides at the time of the filing ~~thereof, or, in the event that such~~ **if the** spouse ~~shall have~~ **has** died, for the county in which such spouse resided at the time of death. ~~In the event that such~~ **If the** notice of claim . . .