



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

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Bill Number:

HB 4732 (Sak) Civil procedure; evictions; property managers and other nonlawyers to represent businesses in certain eviction proceedings; allow. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5707.

Date position was adopted:

December 14, 2005

Process used to take the ideological position:

Vote of the Council of the Section

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

Of the 19 voting members, 13 were present. 13 voted in favor, none were opposed.

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The Council of the Real Property Law Section opposes HB 4732 for the following reasons:

It appears that HB 4732 (the "Proposed Legislation") intends, within the context of the summary proceedings act, to extend the right to represent parties (in other words, to act as their lawyers) before the court to any "agent of the entity who has direct and personal knowledge of the facts of the dispute." Presumably this includes any property manager or contract agent familiar with the vendor or landlord's business records concerning payment. The proposed legislation conflicts with the fundamental public policy reflected in MCL 600.901, which states that "[n]o person is authorized to practice law in this state unless he complies with the

requirements of the supreme court with regard thereto.”

The Section believes that the various obligations imposed upon attorneys by the Rules of Professional Conduct, and their status as officers of the court, bring an important level of professionalism to these proceedings as well as some basic assurance that the fundamental due process requirements of the Michigan Court Rules and the summary proceedings act are being honored. Unrestricted and typically unlicensed management “agents” are not bound by the Rules of Professional Conduct and are not likely to share an attorney’s training, experience or concern regarding legal procedure.

The Proposed Legislation (through its establishment of a \$3,000.00 cap) appears to be an effort to incorporate the relaxed representation criteria of the small claims division of the district court into the summary proceedings context. It is important to consider, however, that summary proceedings involve legal interests far beyond the simple monetary interests involved in actions under MCL 600.8401 et seq. Eviction actions impact fundamental interests (for example, basic shelter), which in the residential context are subject to extensive statutory regulation. Forfeiture actions may determine legal and equitable title to real estate under land contract. In neither case does the “past due” amounts upon which these cases are commenced reflect the total economic or social value of the interests. These are not simply collection actions; the summary proceedings act and the Michigan Court Rules impose extensive due process requirements on summary proceedings (requirements that do not exist in small claim actions) because the right to possession is so important.

Despite the importance of the summary proceedings process, the Proposed Legislation actually imposes far less restriction on representation than currently exists in the small claims division. For example, a claim by a corporate plaintiff in the small claims division can only be filed by “a full-time, salaried employee having knowledge of the facts surrounding the complaint.” MCL 600.8407; MCR 4.302(B)(2). No such restriction is imposed on summary proceedings under the Proposed Legislation; a part-time “agent” can apparently act in the full capacity of a lawyer (but with none of the corresponding restrictions imposed by the Rules of Professional Conduct). Additionally, MCL 600.8408 expressly precludes the use of collection agencies or agents in small claims actions. Since management companies will effectively be acting as “collection agents” within the eviction and forfeiture context, the legislation significantly expands the scope of layperson representation beyond that allowed in the small claims division. The proposed legislation goes well beyond any prior model and is not justified by any existing problem with the summary proceeding process. The Rules of Professional Conduct provide important restrictions on advocacy and representation, and they should not be circumvented in the summary proceedings context.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

[http://www.legislature.mi.gov/\(njimuby2in302eqc3vyocrw55\)/mileg.aspx?page=BillStatus&objectname=2005-HB-4732](http://www.legislature.mi.gov/(njimuby2in302eqc3vyocrw55)/mileg.aspx?page=BillStatus&objectname=2005-HB-4732)

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

See above.

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

The State Bar's current position is Active Opposition

Fiscal implications of the recommended policy to the State Bar of Michigan:

None reported.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- ✓ The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
 - The availability of legal services to society
 - The regulation of attorney trust accounts
- ✓ The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller- permissible explanation:

Not provided.