



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

Lawrence Shoffner

Email:

lshoffner@comcast.net

Bill Number:

HB 5625 (Mortimer) Courts; district court; small claims division; allow real estate agents to represent landlords in small claims court in security deposit disputes under certain circumstances. Amends sec. 8408 of 1961 PA 236 (MCL 600.8408).

Date position was adopted:

February 8, 2006

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:

The 14 members at the meeting all voted in favor of the position to oppose HB 5625.

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 Section opposes HB 5625, which would allow real estate agents to represent landlords in small claims court in security deposit disputes.

Reasons for opposition: The small claims division act expressly precludes attorneys and collection agents from representing parties in a dispute before that division of the district court. MCL 600.8408(1). The practical affect of this limitation is to maintain a fair and level playing field between unrepresented parties. Whenever a third-party professional enters a proceeding as an advocate for one party against the other, the unrepresented party is placed at a serious disadvantage. Moreover, the unrepresented party may not fully comprehend the extent of this disadvantage. The proposed legislation contradicts this important feature of the existing statute, which maintains a fair balance between the parties by precluding third-party professionals from representing either side.

The proposed legislation also 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 Michigan Rules of Professional Conduct place important restrictions on lawyers when dealing with persons other than their clients, including special restrictions on dealing with unrepresented persons. MRPC 4.1, 4.3 & 4.4. The Michigan Rules of Professional Conduct do not apply to real estate brokers, associate real estate brokers, or real estate salespersons. The proposed legislation would create a new class of professional courtroom advocate who is not bound by the MRPC, and who is not answerable to the Michigan Bar Association or the Michigan Supreme Court under MRPC 1.0(b).

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/documents/2005-2006/billintroduced/House/htm/2006-HIB-5625.htm>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

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 Michigan Rules of Professional Conduct place important restrictions on lawyers when dealing with persons other than their clients, including special restrictions on dealing with unrepresented persons. MRPC 4.1, 4.3 & 4.4. The Michigan Rules of Professional Conduct do not apply to real estate brokers, associate real estate brokers, or real estate salespersons. The proposed legislation would create a new class of professional courtroom advocate who is not bound by the MRPC, and who is not answerable to the Michigan Bar Association or the Michigan Supreme Court under MRPC 1.0(b).

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.

At its June 9 2006 meeting, the State Bar of Michigan’s Board of Commissioners unanimously voted to adopt a position of 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 reported.