

REAL PROPERTY LAW SECTION
Respectfully submits the following position on:

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HB 5069

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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Real Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,184.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 17. The number who voted in favor to this position was 14. The number who voted opposed to this position was 0. The number who abstained was 2.

Report on Public Policy Position

Name of section:

Real Property Law Section

Contact person:

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Bill Number:

[HB 5069](#) (Heise) Property; other; liability for damages if landlord enters premises; provide exception if occupant is squatting. Amends secs. 2918, 5711 & 5714 of 1961 PA 236 (MCL 600.2918 et seq.).

Date position was adopted:

January 27, 2014

Process used to take the ideological position:

Position adopted after an electronic discussion and vote

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

2 Abstained from vote

1 Did not vote

Position:

Oppose and Amend

Explanation of the position, including any recommended amendments:

Anti-Squatter Legislation: Proposed Amendment to MCL 600.2918(3).

The Real Property Law Section of the State Bar of Michigan opposes the proposed legislation in its current form because the use of the term “tenant” in the proposed amendment to MCL 600.2918(3) undermines the intent of the legislation and may instead encourage lockouts against legitimate leaseholders. Proposed modifications to the legislation are attached.

When a statute does not define a term, the term is construed according to its common and approved usage. *Nelson v. Grays*, 209 Mich. App. 661 (Mich. Ct. App. 1995). The word “tenant” under this statute has already been defined by controlling case law. As Nelson states:

The antilockout statute does not define the word "tenant." When a statute does not define a term, we will construe the term according to its common and approved usage. *Jennings v Southwood*, 446 Mich 125, 139; 521 N.W.2d 230 (1994). Resort to dictionary definitions is appropriate to construe the common and approved usage of undefined statutory terms. *Id.* at 139-140; *In re Estes Estate*, *supra*. The term "tenant" has been defined as "a person or group that rents and occupies land, a house, an office, or the like, from another, usually under the terms of a lease; lessee." *Random House Webster's College Dictionary* (1992). *Black's Law Dictionary* (6th ed) defines "tenant" as "one who has the temporary use and occupation of real property owned by another person (called the 'landlord'), the duration and terms of his tenancy being usually fixed by an instrument called a 'lease.'" Also, "one renting land and paying for = it" is considered a tenant. *Id.*

Notably, § 1(d) of the landlord tenant relationship act (LTRA), MCL = 554.601(d); MSA 26.1138(1)(d), [665] defines "tenant" as "any person who occupies a rental unit for residential purposes with the landlord's consent for an agreed-upon consideration." Although this definition is quite broad, its use in § 1(e) of the LTRA, MCL 554.601(e); MSA 26.1138(1)(e) indicates a narrower group of individuals. Section 1(e) defines "security deposit" as "a deposit, in any amount, paid by the tenant to the landlord or his or her agent to be held for the term of the rental agreement, or any part thereof, and includes any required prepayment of rent . . ." (emphasis added). Thus, the LTRA apparently recognizes that a "tenant" is the individual or individuals who pay consideration to the landlord for the right to occupy rental property, rather than the members of the larger family unit dwelling in the rental property.

This conclusion is supported by two recent cases, *Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 603-606, 608; 505 N.W.2d 254 (1993), and *De Bruyn Produce Co v Romero*, 202 Mich. App. 92, 100-102, 108; 508 N.W.2d 150 (1993), where the Michigan Supreme Court and this Court focused on whether the persons occupying the employer-provided housing had paid consideration for the housing in order to determine whether they were tenants. 1 *Grant* and *DeBruyn Produce* confirm that the determination that an occupier of property is a tenant depends upon the existence of a contractual relationship between the owner and the possessor wherein the possessor pays consideration in exchange for the right to occupy the property.

In light of the dictionary definitions of tenant, the usage of tenant in the LTRA, and the meaning given to tenant by the courts, we believe that neither the district court nor the circuit court erred in finding that plaintiff's children were not "tenants" entitled to separate damages under § 2918(2). While plaintiff had an oral contract with defendant to pay rent in exchange for possession and occupancy of the rental property, the record is devoid of any evidence that plaintiff's children had a separate contractual right to occupy the premises.

Nelson v. Grays, 209 Mich. App. 661, 664-666 (Mich. Ct. App. 1995). Because the status of "tenant" depends upon "the existence of a contractual relationship between the owner and the possessor wherein the possessor pays consideration in exchange for the right to occupy the property" the term does not apply to squatters. Use of the word "tenant" therefore excludes squatters, who will remain unaffected by the proposed legislation. The only persons who will be affected under the current wording are (a) those with a contractual relationship and (b) who have paid consideration to the landlord. This is not the intent of the legislation.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2013-HB-5069>