

Report on Public Policy Position

Name of section:

Real Property Law Section

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Bill Number:

[HB 4869](#) (Sheltrown) Civil procedure; evictions; property managers; allow to represent landlords in eviction proceedings. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 5705.

Date position was adopted:

July 18, 2009

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Council of the Real Property Law Section opposes HB 4869 for the following reasons:

It appears that HB 4869 (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 property manager. 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.

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

<http://legislature.mi.gov/doc.aspx?2009-HB-4869>