



## Report on Public Policy Position

**Name of Section:**

Real Property Law

**Contact Person:**

Patrick Karbowski

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**Bill Number:**

HB 4523

**Date position was adopted:**

April 16, 2004

**Process used to take the ideological position:**

Vote of the Council of the Section

**Number of members in the decision-making body:**

16

**Number who voted in favor and opposed to the position:**

Of the 16 Voting members, 12 were present. 12 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 Section opposes HB 4523 for several reasons, including the following:

The bill does not require the person against whom a claim for adverse possession is being asserted be the title holder of the property at issue. As such, the bill creates the potential for injustice by basing title on tax payer status, rather than principles of title and long standing doctrines of real estate law;

The bill does not address the issues of "tacking" or other issues inherent in resolving a dispute involving a claim of adverse possession;

The bill would, in certain circumstances, negate the doctrine of acquiescence, which for well over 100 years has been an effective method for resolving boundary disputes, including boundary disputes involving claims of adverse possession;

The bill would work an injustice under circumstances where for tax parcel inventory purposes, land has been assigned by a local assessor to a tax payer who did not otherwise have, or previously claim, any right of ownership to the parcel.

The bill creates the potential for injustice by negating, in some circumstances, the careful analysis on a case by case basis that is needed to resolve claims of title involving adverse possession.

**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/mileg.asp?page=getObject&objName=2005-HB-4523>

<b>RECOMMEND STATE BAR ACTION ON THIS ISSUE:</b>
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**Arguments for the position:**

None reported.

**Arguments against the position (if any):**

See "Position."

**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.**

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

**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:**

None reported.