

2002-2003 ANNUAL REPORT REAL PROPERTY LAW SECTION

The Real Property Law Section continues to be one of the more active sections in the State Bar of Michigan.

Continuing Legal Education.

We continued our long practice of presenting the Homeward Bound Series, which consists of monthly seminars on current real estate topics offered in conjunction with the Institute for Continuing Legal Education.

This year the traditional afternoon format was replaced by a breakfast roundtable format for two of the sessions. The goal in using this format is to provide an opportunity for more interactive participation. In each case, one of the Section's special committees organized an introductory presentation by a keynote speaker or panel, followed by discussions at each of the breakfast tables on topics led by designated people.

Summer Conference.

In 2002 our summer conference was held at Mackinaw Island. Again, CLE was an important part of the event, with breakfast roundtables held on Thursday and Friday morning, and presentations and workshops on Thursday, Friday and Saturday mornings. The rest of the time was devoted to enjoying Mackinaw Island.

In 2003 our summer conference will be at Crystal Mountain. The Council elected to hold our annual meeting during the summer conference since we usually have strong attendance from Section members.

Legislation.

We continued to bring the expertise of Section members to bear on legislation by providing draft legislation for areas that would benefit from clarification, commenting on bills that potentially interfere with the operation of the real estate system, and providing suggested alternatives for bills that do not accomplish their stated purpose (often due to some misunderstanding about real estate law).

About ten years ago the Section Council decided to become more active on the legislative front after several bills were passed that inadvertently had an adverse impact on real estate issues. Initially we relied on a lobbyist and Section members located in Lansing to identify relevant bills. However, in recent years the Michigan Legislature created a web site that has become an increasingly powerful tool for identifying and tracking legislation. Today we use the lobbyist primarily to determine the political realities of bills that we have identified as relevant (is the bill likely to move forward, who are the interested constituencies, etc.), and to assist us in developing the most effective presentation of any comments or positions.

Amicus Briefs.

Several *amicus* briefs were filed this past year. In response to an invitation from the Michigan Supreme Court, we filed a brief in *Archambo v. Lawyers Title Ins. Corp.*, which involved liability of a title insurance company and the interaction of a commitment and title policy. As a general rule, we will submit a brief in response to an expression of interest from the Michigan Supreme Court if the Council is able to develop an appropriate position based on input from Section members with relevant expertise.

The Section's Zoning and Land Use Committee proposed participation in *Petosky v Bear Creek*. The Council unanimously endorsed seeking participation as an *amicus* based on the belief that the decision was incorrect as a matter of law, because a consent judgment is neither a rezoning, nor is it a legislative act which may be subject to a referendum.

The brief we filed in *Graves v American Acceptance Mtg. Co.* was a continuation of an effort that began in 2001, when the Council voted to seek to participate as an *amicus* because of the perceived adverse impact of the Court of Appeals decision on the ability to obtain financing secured by land contract interests.

This is an area of special interest because of our prior legislative effort: Historically, it was difficult to use land contract interests as collateral for loans because of the ambiguity about the nature of the interests (i.e., whether they constituted personal or real property, and the applicable procedures for creating and enforcing liens on the interests). An *ad hoc* committee drafted a land contract mortgage act to provide certainty in this area, which was ultimately enacted as MCL 565.356 *et seq.*

The Court of Appeals decision in *Graves* opened the possibility that a subsequent lender could potentially prime a prior lender with a mortgage on a land contract interest. The Supreme Court issued a decision in *Graves* based solely on the pleadings filed in connection with seeking review. At the request of one of the parties and the Michigan Land Title Association (also seeking participation as an *amicus*) the Court agreed to reconsider and vacated its prior decision. In granting the reconsideration, it authorized the Section to participate as an *amicus*. With the continuing support of the Council, we filed a brief that again focused on the special nature of land contracts in Michigan.

Adventures in Computing.

On the organizational front, we have been experimenting (not *always* successfully) with the use of computers to enhance our effectiveness and efficiency.

The Section's Council meets monthly, and substantial agenda materials are distributed to approximately 30 people prior to each meeting. This year, we moved from distribution of this material by mail to distribution by e-mail. I will confess that on occasion I got carried away and was not as discriminating in selecting materials for distribution as I probably should have been. However, overall I believe the experiment was a success.

We are also actively working to establish listservs for each of our special committees, with the hope that, among other things, this will encourage participation by Section members across the state.

Comment on SBM Section Advocacy Proposals

The Section's bylaws include the following mandate:

The purpose of this Section shall be to study the laws and procedures pertaining to Real Property Law and to promote the fair and just administration of Real Property Law; to study and report upon proposed and necessary legislation, including, but not limited to, pending legislation and drafting and introducing legislation; to study and report on pending litigation, including, but not limited to, the filing of amicus curiae briefs; to promote throughout the State of Michigan the legal education of members of the Bar and the public on Real Property Law by sponsoring meetings, institutes and conferences devoted to Real Property Law, by the preparation and dissemination of books, booklets, materials, pamphlets and brochures with respect thereto and by preparing and sponsoring and publishing legal writings in this field. The Section shall endeavor to promote professional responsibility and the prevention of malpractice among the members of the Bar. The term "Real Property Law" shall include, but not be limited to, the law of mortgages, liens, encumbrances, property taxes, land titles, land use, zoning, leases, land sales, water law, riparian rights, conveyancing, taxation, condominiums and environmental law.

Consistent with this mandate and our interest in advocating positions, we provided comments on the proposed State Bar of Michigan bylaw amendments regarding section advocacy, and actively participated in discussions that resulted in modifications to the initial proposals.

Vicki R. Harding
2002-2003 Chairperson