

# Legislative Analysis



## RE-ENTRY BY LANDLORD AFTER TENANT'S DEATH; REDUCE STATUTE OF LIMITATIONS FOR DAMAGES

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House Bill 4263 as enrolled

Pocket Vetoed

Sponsor: Rep. Margaret E. O'Brien

House Committee: Judiciary

Senate Committee: Judiciary

### Second Analysis (4-8-13)

**BRIEF SUMMARY:** Under the bill, a landlord who reentered and took possession of a rental unit after the tenant died would not be liable in a civil action for damages if certain conditions were met. The bill also would limit the statute of limitations for recovery of damages for forcible entry or unlawful interference, under any circumstance, to one year from the date the cause of action arises.

The bill was passed by both chambers and ordered enrolled, but was subsequently "pocket vetoed." According to the Clerk of the House, "[t]he enrolled bill, having not been approved as of January 10, 2013, as of 11:04 a.m., did not become law in accordance with the provisions of Art. IV. Sec. 33 of the Constitution." (2012 Journal of the House Addendum, p. 2938)

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the judiciary. The bill reduces the number of potential actions that may be taken by tenants, and thus the courts may see some savings due to a reduction in their total civil caseload. The amount of actions previously taken that would now be exempted is not known.

### THE APPARENT PROBLEM:

The death of a tenant who lives alone can be problematic for landlords. If there is no co-tenant, or if no heirs open an estate through the probate court or come to claim the deceased's possessions, landlords are forced to go through a lengthy and costly process before they can take possession of the rental unit, clear out the personal belongings of the deceased, and rent the unit to new tenants. (See **Background Information**.) The Property Management Association of Michigan has requested that the law be changed to allow for a quicker, less expensive process for landlords to regain possession of a rental unit that would avoid going through the probate court.

In a related matter, a tenant may file an action for damages when a landlord engages in forcible entry or unlawful interference either within one year from the date of the incident, or one year from the date the plaintiff/tenant becomes aware of the incident (for instance, the tenant may have been away for an extended period due to work, illness, or vacation or, in the case of a deceased tenant, the heirs did not have immediate knowledge of the tenant's death). Thus, the one-year extension based on discovery of the landlord's

conduct can extend the landlord's liability for an indeterminate amount of time. Some would like this "after-the-discovery-extension" eliminated and simply provide for a one-year statute of limitation.

### ***THE CONTENT OF THE BILL:***

The bill would, among other things, add to the circumstances under which a landlord could reenter and take possession of rental property without being subject to a lawsuit by the tenant. It would add reentering and taking possession after the tenant died if certain conditions were met.

Under current law, a tenant whose possession of a rental unit has been unlawfully interfered with by the owner, lessor, licensor, or their agents (landlord) is entitled to recover the amount of actual damages or \$200, whichever is greater, in addition to regaining possession of the premises if they had been evicted or locked out. Actions by the landlord that constitute "unlawful interference" are contained in statute and include such things as removing or destroying the tenant's personal property; changing the locks on the doors; using force or threats of force; and introducing noise, odors, or other nuisances to drive out the tenant.

However, it is not unlawful interference if the landlord regained entry under a court order; interfered temporarily with possession in order to make needed repairs or inspections (if conducted according to law); or believed in good faith that the tenant had abandoned the premises, and, after diligent inquiry, had reason to believe the tenant did not intend to return and the current rent had not been paid.

House Bill 4263 would amend the Revised Judicature Act (MCL 600.2918) to clarify that an owner's actions would not unlawfully interfere with a possessory interest of the tenant if any of the exceptions discussed above applied. The bill would also add another exception.

The new exception would apply to an owner (defined under the bill to mean the owner, lessor, or licensor or his or her agent) who met all of the following requirements:

- The owner believed in good faith that the tenant had been deceased for at least 30 days and that there was no surviving tenant.
- The owner had informed the tenant in writing of the tenant's option to provide contact information for an authorized person the owner could contact in the event of the tenant's death.
- If the tenant had provided contact information, at least seven days before the owner reentered the property to take possession and dispose of its contents, the owner made a reasonable attempt to contact the authorized person using the contact information provided and to request that person to open a probate estate for the tenant or to serve as personal representative if the owner opened a probate estate. The owner would not be responsible for incorrect contact information or

for the authorized person's failure to respond to the notification before the owner reentry into the premises.

- At least seven days before reentry, the owner placed a notice on the door of the premises indicating the intent to reenter, take possession of the premises, and dispose of its contents.
- A probate estate had not been opened for the deceased tenant in the county in which the premises were located and the owner had not been notified in writing of the existence of a probate estate opened in another county and of the name and address of the personal representative.
- Current rent has not been paid.

House Bill 4263 would also revise a provision to shorten the statute of limitations for actions by a tenant to recover damages for forceful entry or unlawful interference. Currently, an action to recover damages (for example, loss of property) under Section 2918 must be begun within one year from the time the cause of action arises (the date the landlord committed the forcible entry or unlawful interference) or becomes known to the plaintiff. The underlined portion would be eliminated. The act also provides for a 90-day "after discovery" extension for filing an action to regain possession of the premises. That provision would not be amended.

#### ***BACKGROUND INFORMATION:***

The bill is similar to House Bill 5034 of the 2009-2010 legislative session. That bill was passed by the House of Representatives but failed to see Senate action.

According to information supplied by the Property Management Association of Michigan during the discussion of last session's bill, if the heirs of a deceased tenant do not open an estate, only a personal representative appointed by a probate court has the authority to enter the apartment, collect personal belongings, or receive service of a landlord/tenant lawsuit. In such cases, landlords must either wait for a creditor to initiate probate or incur the expense of opening probate themselves. Reportedly, these costs can run from a minimum of \$500 to approximately \$1,000. In addition, the landlord incurs the costs of arranging for a court officer to empty the apartment, plus the loss of any unpaid rent and revenue that would have been earned had the landlord been able to rent the unit sooner. Even if the heirs open an estate, it can take up to six months before the process is worked through, the rental unit cleared of the deceased's personal belongings, and the unit turned back over to the landlord.

#### ***ARGUMENTS:***

##### ***For:***

Supporters of the bill see it as a mechanism for landlords to recover possession of their rental units within a reasonable time after a tenant dies and to allow for the removal and

disposal of unclaimed personal property remaining on the premises without having the expense and delay of having to open an estate in probate court.

According to industry members, especially in the case of lower-income tenants, there either are no heirs; no listing of next-of-kin; or if relatives are located, they are not interested in opening an estate or taking possession of the deceased's belongings. Even when heirs are located, they may not have the same sense of urgency to come and empty the rental unit in a timely manner, and often are unable or unwilling to pay the monthly rent until the unit is cleared out. Each month that the apartment or rental home is off the market, the landlord loses revenue. The time limits placed in the law by the bill and avoidance of probate court proceedings (which require belongings to be inventoried) would decrease the financial burden upon landlords and even allow them to use self-help to clear the rental units instead of paying for court officers to place the belongings on the curb.

Awareness of the expedited process that the bill would create could motivate renters to include contact information in lease agreements or with their landlords or to make wills detailing their wishes for the disposal of their possessions. Moreover, the bill's new exception would only be triggered when all of the new listed conditions existed. Thus, the bill balances the interests of tenants and landlords by making clear the obligations of property owners and managers when a tenant passes away.

***For:***

By allowing an extended time period (one year after discovery of forcible entry or unlawful interference on the part of a landlord) in which plaintiffs can file an action to recover damages, current law unfairly creates an indeterminate period of liability for landlords. The bill would address that.

***Against:***

The provision shortening the statute of limitations for an action to recover damages would apply to all rental scenarios, not just ones involving a deceased tenant. Most civil actions have a two- or three-year SOL, therefore the current one-year extension to allow for discovery of the landlord's conduct is not unreasonable.

The bill, by eliminating this important protection for tenants or heirs, seems overly protective of landlords, whose liability for their conduct would be reduced. The one-year extension should be preserved for those situations when a tenant was not immediately aware of the landlord's conduct, or for those times when an heir is not immediately located and the landlord regains possession of the unit and disposes of the personal belongings without following the process currently required by law or as proposed by the bill.

***Against:***

There appear to be several concerns with the bill regarding the expedited process by which landlords could retake possession of rental units after tenants die:

- The bill is not establishing a "right of entry" for landlords to retake possession of a rental unit after a tenant dies. It is actually establishing a defense to a civil

lawsuit for interference with a tenant's possessory interest. As such, some feel that this provision may be better placed elsewhere in law.

- Some are concerned that the noticing requirements on the part of the landlord regarding the death of a tenant are too weak. A simple text message or message left on an answering machine or in voicemail may suffice as a "reasonable effort" to contact an heir, not evidence that the person actually received the message. A seven-day notice requirement does not even provide sufficient time for a letter to reach an heir if the act of mailing is considered to start the seven-day clock ticking. Even if the heir makes contact before the seven-day period expires and tries to set a date for clearing out the unit, there is nothing in the bill to prevent the landlord from reentering the premises and disposing of the personal property on that seventh day.
- Under the bill, with its shortened time frames and the ability to avoid probate court unless another creditor opened an estate, distant or estranged heirs may not hear of the deceased's death until after all of the family treasures had been lost or disposed of.
- The bill does not require the landlord to inventory the personal property before removal. Thus, there is no accounting of how the property was disposed or even what was disposed of. Would valuable items be confiscated by the landlord? Would family heirlooms be thrown out on the curb? In cases in which grounds may exist to support an action that a landlord did not meet all the conditions for this new exception, it would therefore be difficult for heirs to establish an accurate claim for damages.
- Unless a lease provided that it would be terminated upon the death of the tenant, the deceased's estate would still be responsible for overdue rent. This is true even if a landlord should dispose of all the property (some of which may have been valuable) that could have been used by the heirs to offset legal debts.
- All that a landlord has to do under the bill to trigger the expedited process for clearing a dead tenant's unit is to provide written information that the tenant may leave contact information in the event of his or her death. It appears that the bill actually creates a shorter, cheaper process for the landlord if the tenant does not provide such information. Thus, the bill could encourage bad faith actions on the part of unscrupulous landlords such as putting this notification in such small print on the lease agreement, or burying it in a long paragraph, that tenants would have difficulty seeing it. And, unless a lease contained a space to include contact information, how would it be known if the tenant had provided the information or had declined to do so? A bad landlord could simply claim that no contact information had been provided.
- The bill may unfairly burden poor or elderly heirs, or families of tenants with developmental disabilities or mental illnesses, who are estranged from the deceased or who live some distance away. Without the protections currently afforded under probate laws, the expedited process may not leave sufficient time

for these heirs to receive notice of the death and to make the necessary financial and travel arrangements to retrieve the property before the landlord disposes of it.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.