

Legislative Analysis



ALLOW EVICTION NOTICE VIA EMAIL

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4038 as enacted
Public Act 36 of 2015
Sponsor: Rep. Anthony G. Forlini
Committee: Judiciary
Complete to 6-24-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4038 allows a landlord to deliver an eviction notice by electronic mail (such as email), under specified circumstances. The bill took effect August 19, 2015.

Chapter 57 of the Revised Judicature Act, entitled "Summary Proceedings to Recover Possession of Premises," addresses the process by which a property owner may regain possession of leased premises. Under Section 5716, the property owner must make a demand for the premises or for payment (rent) in writing. Section 5718 allows the property owner to personally deliver the demand to the person in possession of the premises or deliver it on the premises to a member of that person's family or household or an employee. The demand may also be delivered by first-class mail.

House Bill 4038 amends Section 5718 of the RJA to also allow the demand to be delivered by electronic service, if the person in possession of the premises has specifically consented to electronic service of the demand in writing and if the consent or confirmation of the consent has been sent by one party and affirmatively replied to, by electronic transmission, by the other party.

The electronic service address used by a party in the process described above will be considered to remain that party's correct, functioning electronic service address, unless the process described above is repeated using a different electronic service address for that party or unless that party notifies the other in writing that that party no longer has an electronic service address.

A landlord could not refuse to enter a lease because the prospective tenant declines to consent to electronic service under the bill.

"Electronic notification" is defined to mean the notification to a person that a document is served by sending an electronic message to the electronic service address at or through which the person has authorized electronic service, specifying the exact name of the document served or providing a hyperlink at which the served document can be viewed and/or downloaded.

"Document" means a digital image of a record originally produced on paper or originally created by an electronic means, the output of which is readable by sight and can be printed to paper.

"Electronic service" means service of a document on a person by either electronic transmission or electronic notification.

"Electronic service address" of a person means the electronic address at or through which the person has authorized electronic service.

"Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a person has authorized the electronic service.

MCL 600.5718

FISCAL IMPACT:

The bill would have no fiscal impact on the Judiciary.

BRIEF DISCUSSION OF THE ISSUES:

Supporters of the bill say that it reflects the changing behaviors of tenants. Landlords are finding that not all tenants in apartment buildings or complexes request a mailbox. Some tenants may have a mailbox, but check it infrequently as most of their business and correspondence is conducted online. Thus, providing a landlord, and a tenant, with the option to send a notice to quit by email or posting to someone's Facebook page or other electronic service may enable a tenant to receive the notice sooner than under the current practice. Supporters say that electronic notices of the notice to quit may mitigate the practice of some landlords who claim that a notice was posted on the tenant's door when it really wasn't. Sending the notice via electronic notification will create and preserve a "paper trail" that can verify when a notice was sent and whether or not a notice was received by the intended recipient.

Importantly, a landlord could not routinely use email or social media to deliver eviction notices. The bill is very clear that before an eviction notice is sent by electronic service, a tenant must (1) specifically consent in writing to receive a notice in this way; (2) send the consent or confirmation of the consent by electronic transmission; and (3) receive by electronic transmission an affirmative response from the landlord.

Some critics found the bill's provisions troubling. It is not unusual for people to change their email addresses frequently or to change the types of social media they use to interact with others. Moreover, just because one email or posting was sent back and forth by the parties today does not mean that that same channel will be available in the future, especially in the case of long term leases. For instance, a tenant may not remember to give a new email or other electronic service address to the landlord, and vice versa. Should the landlord change his or her service address, a tenant receiving an email or post from an unrecognized address may delete the message unopened. And just because an email is successfully delivered today does not mean that tomorrow's email from the same source won't land up in the recipient's junk folder. Not everyone remembers to check the junk mail folder on a regular basis. Thus, though some may welcome the new option, it is not without potential for tenants to still not receive the notice to quit in a timely manner or to be surprised to find an eviction notice taped to their doors.

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