

## **REPRESENTATION OF LIMITED LIABILITY COMPANIES IN EVICTION PROCEEDINGS**

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**House Bill 4463 (Substitute H-1) as reported from committee**  
**Sponsor: Rep. Scott VanSingel**  
**Committee: Law and Justice**  
**Complete to 6-15-17**

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

***BRIEF SUMMARY:*** House Bill 4463 amends Chapter 57 of the Revised Judicature Act, which deals with summary proceedings to recover possession of premises. The bill would add a new Section 5707. Generally speaking, the new section would allow a limited liability company (LLC) to be represented by a person other than a lawyer in an eviction case, if the LLC had only one member or had only two members who are individuals married to each other, and other conditions were met.

### ***FISCAL IMPACT:***

HB 4463 would have an indeterminate fiscal impact on the state and local court funding units, and would depend on how provisions of the bill affected court staff workloads, court caseloads, and the related administrative costs.

### ***THE APPARENT PROBLEM:***

The eviction process is fairly straightforward in courts, allowing both the landlord and the tenant to represent themselves during the proceedings. Representing yourself in court without the help of an attorney is called "pro per" or "pro se," and is referred to as "in pro per," "representation pro se" or "acting pro se." However, under current law, if a landlord is a Limited Liability Company (LLC), he or she may not represent themselves in court and must instead be represented by an attorney. Most landlords form an LLC for personal protection against lawsuits, and in most cases they are a single-person or married couple. This legislation has been introduced to allow single-person or married couple LLCs, which are believed to account for most eviction proceedings, to represent themselves in an eviction proceeding.

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

Under the bill, if a complaint in a summary proceeding requests only the recovery of possession of the premises, or both recovery and a money judgment, not including taxable costs, and if a party to the proceeding is an LLC, the party may be represented in the proceeding by a member.

Representation may only occur, however, (1) if the member has direct and personal knowledge of the facts alleged in the complaint; and (2) if the amount is less than the applicable limit of the small claims division, as described in Section 8401 of the RJA, when a complaint requests the recovery of possession *and* a money judgement, not including

taxable costs. (The limit is currently \$5,500; beginning January 1, 2018 it will be \$6,000; and it is set to increase by \$500 every 3 years until reaching \$7,000 in 2024.)

The above representation would apply only if one of the following applies to the LLC:

- The LLC has only one member and the member is an individual; or
- The LLC has only two members who are individuals married to each other. In this scenario, both members would have to sign a verified statement authorizing the representation, and the original signed copy would be filed with the court in the summary proceeding. Before the hearing, a designated court employee would have to review the file and determine that the verified statement had been filed with the court. This entire subdivision would not apply if there was an action for divorce or separate maintenance pending between the members, or if a judgement for separate maintenance was entered as to the members.

A party seeking to proceed under the new section would have the burden to prove that it qualifies to do so. The bill also states that representation under this new section would not violate Section 916, which prohibits the unauthorized practice of law.

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

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

Many landlords want and need personal protection from lawsuits stemming from rental properties, and creating an LLC is a great solution. However, current law will not allow an LLC to represent themselves in court during an eviction proceeding. Supporters of the bill do support the original intent and meaning behind the restriction (so large companies do not put tenants, also representing themselves, at a severe disadvantage and instead hold the attorney accountable for fair and reasonable decorum for both parties). Yet, they also believe that when an LLC comprises of a single person or married couple, they, too, should have the right to represent themselves. This way, both parties are still on an equal footing and the small LLC does not have to spend money it may not have on an attorney for a straightforward proceeding.

##### ***Against:***

Parties opposing the bill have raised concerns regarding a "mom and pop" LLC comprising a married couple being unable to represent themselves if there is a current divorce proceeding or filing, as the bill is silent regarding a situation in which there has been a completed divorce proceeding but the LLC is registered a married couple. This would require court staff to do investigative work when the LLC submits a signed, verified statement authorizing representation, slowing down the court process and possibly causing delays and back-ups on the court docket.

Another concern raised is that under the law, corporations and other companies, such as an LLC, are treated as persons, yet are not actually people. This distinction is important, as a company cannot represent itself as a single person. As such, it must appoint an agent to represent it in court, and that agent must be a lawyer, as anything else would be the unauthorized practice of law.

Additionally, critics of the bill believe that if an LLC is representing itself under this narrow exception allowed by the bill, the ability to raise other claims during an eviction proceeding could be problematic. If LLCs can represent themselves in such limited circumstances, the ability to bring a single other tort claim or the ability to transfer the claim to small claims court would essentially be prohibited. Instead, the claim would have to be brought again with proper representation, further extending the process.

A final fear that critics raised regarding the bill is that judges would have to take complicated facts and findings when dealing with Section 8 contracts, federal regulations, or covenants (all of which can arise during an eviction proceeding) and fit them into legal theories for the parties, which is time-consuming. This process could also stall court dockets.

### ***POSITIONS:***

A property manager from Big Rapids testified in support of the bill as introduced. (5-16-17)

A representative from the Rental Property Owners Association testified in support of the bill as introduced. (5-16-17)

A representative from the State Bar of Michigan testified in opposition to the bill as introduced. (5-16-17)

A representative from the Real Property Section of the State Bar of Michigan indicated opposition to the bill as introduced. (5-16-17)

Two representatives from the Michigan District Judges Association spoke and submitted written testimony in opposition to the bill. (5-16-17 and 5-30-17)

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