

REPRESENTATION OF LIMITED LIABILITY COMPANIES IN EVICTION PROCEEDINGS

Phone: (517) 373-8080
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House Bill 4509 as reported from committee
Sponsor: Rep. Scott VanSingel
Committee: Judiciary
Complete to 6-12-19

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

BRIEF SUMMARY: House Bill 4509 would amend Chapter 57 of the Revised Judicature Act (RJA), which regulates summary proceedings to recover possession of premises. The bill would add section 5707, which would allow a limited liability company (LLC) to be represented by a person other than a lawyer in an eviction case, but only if certain conditions were met.

FISCAL IMPACT: House Bill 4509 would have an indeterminate fiscal impact on the state and on local court funding units. Costs would depend on how provisions of the bill affected court staff workloads, court caseloads, and related administrative costs.

THE APPARENT PROBLEM:

The eviction process currently allows both a landlord and a tenant to represent himself or herself 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), then that landlord may not represent himself or herself in court and must instead be represented by an attorney. According to committee testimony, most landlords form an LLC for personal protection against lawsuits. In many cases, an LLC is composed of a single person or a married couple. The current 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 requested 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 was an LLC, that party could be represented in the proceeding by a member of the LLC.

However, such representation could only occur if both of the following applied:

- The member has direct and personal knowledge of the facts alleged in the complaint.
- 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 judgment, not including taxable costs. (The limit is currently \$6,000; beginning January 1, 2021, it will be \$6,500; and it is set to a final increase to \$7,000 in 2024.)

Such representation could also only occur if one of the following applied to the LLC:

- The LLC has only one member, and the member is an individual.
- The LLC has only two members, who are married to one another. In this case, 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 provision would not apply if there was an action for divorce or separate maintenance pending between the members or if a judgment for separate maintenance had been entered as to the members.

A party seeking to proceed under the new section would have 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.

Proposed MCL 600.5707

BACKGROUND:

A similar bill was introduced in the 2017 legislative session as House Bill 4463.¹

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 itself in court during an eviction proceeding. Supporters of the bill do support the original intent and meaning behind that 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 consists 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.

Supporters of the bill also argue that the current process penalizes the LLCs who follow the law, as it is costly to hire an attorney for every eviction proceeding. However, as a plaintiff in an eviction proceeding, only proof of ownership of the property is required, so many LLCs are already representing themselves as the owner of the property instead of as the LLC over the property. These extra costs allocated against the LLCs who are following current law are then passed on to their tenants, which contributes to increased cost of rent.

¹ For more information, see: <http://legislature.mi.gov/doc.aspx?2017-HB-4463>.

Against:

Opponents of the bill argue that under the law, corporations and other companies, such as LLCs, are treated as persons, yet are not actually people. This distinction is important, as a company cannot represent itself as a single person. Given this, 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 argue that if an LLC is representing itself under this narrow exception allowed by the bill, then 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 and adding more court costs.

Opponents of the bill further argue that creating an LLC inherently holds both benefits and risks, which includes the benefit concerning personal liability and the risk of requiring an attorney to represent the LLC in an eviction proceeding. These benefits and risks, along with others, are weighed carefully before entering into an LLC or creating another kind of company or partnership. Given this, it is known what risks would be present with each benefit before entering into an LLC.

POSITIONS:

A representative of Rental Property Owner Association indicated support for the bill.
(5-21-19)

A representative of the Michigan District Judges Association testified in opposition to the bill. (5-21-19)

A representative of the Michigan Poverty Law Program indicated opposition to the bill.
(5-21-19)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ 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.