

Legislative Analysis



POST-CLOSING OCCUPANCY AGREEMENTS

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

House Bill 5384 as reported from committee
Sponsor: Rep. John R. Roth

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

House Bill 5385 as reported from committee
Sponsor: Rep. Denise Mentzer

House Bill 5386 as reported from committee
Sponsor: Rep. Kelly Breen

Committee: Judiciary
Complete to 4-30-24

SUMMARY:

House Bills 5384, 5385, and 5386 would amend three different acts to address post-closing occupancy agreements, which allow a seller of residential property to continue to live there temporarily after the sale of that property. These are also called rent-back or leaseback agreements: the new owner (buyer) rents the premises back to the old owner (seller) for a specified period of time. The bills would provide that those agreements are not rental agreements subject to the laws governing landlord-tenant relationships and would allow the buyer to recover possession of the premises through a summary eviction proceeding if the seller stays past the end of the agreement.

House Bill 5384 would amend the Truth in Renting Act, which prohibits certain provisions from being included in rental agreements. The bill would specify that a residence occupied by the seller on a temporary basis after a sale is not *residential premises* under the act.

MCL 554.632

House Bill 5385 would amend 1972 PA 348, the landlord-tenant act, to provide that a residence occupied by the seller on a temporary basis after a sale is not a *rental unit* under the act.

MCL 554.601

House Bill 5386 would amend the Revised Judicature Act to allow eviction procedures to be used when a seller continues to possess the property after a rent-back agreement has expired. The person entitled to possession (the new owner) could sue to evict immediately (i.e., they would not have to first serve notice and then wait a specified time).

MCL 600.5714

BRIEF DISCUSSION:

The bills address situations in which residential property is sold and the transaction includes an agreement that allows the seller to continue to stay in the property for a specific amount of

time before the buyer takes possession. Often these agreements are intended to give the seller some more time to figure out their next step, for example if their property sold before they found their next place. According to committee testimony, these kinds of agreements have existed for many years, and their use appears to be increasing of late. However, the practice is not specifically defined or addressed in Michigan law, and there is concern that such an arrangement could be legally interpreted as constituting a landlord-tenant situation. In addition, an agreement as written might not take into account the possibility that a seller could overstay it and the issues that may arise in that circumstance.

Supporters of the bills argue that they provide needed clarity about whether Michigan laws that govern landlord-tenant arrangements apply to post-closing occupancy arrangements. The bills would ensure that a post-closing occupancy agreement does not inadvertently create a landlord-tenant relationship and that the new owner (buyer) is not subject to the responsibilities and requirements that apply in a residential lease situation (for example, insurance considerations, maintenance and repair responsibilities, and regulations governing security deposits or the content and process for rental agreements). Those kinds of duties would be both inappropriate and burdensome in the context of a residential sale agreement. The bills would also address and clarify the legal process for a buyer to get possession of the premises from a seller who is staying there beyond the terms of the temporary arrangement. By providing some statutory clarity, supporters argued, the bills would also encourage intelligent planning by both buyers and sellers and thus help avoid costly disputes between them.

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local units of government.

POSITIONS:

Representatives of Michigan Realtors testified in support of the bills. (2-14-24)

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