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## PROPERTY MANAGEMENT ASSOCIATION OF MICHIGAN: LEGISLATIVE COMMITTEE REPORT

March 2007

### I. PRIORITY ISSUES

- A. AT-RISK PROPERTY PROTECTION ACT/INSPECTION REFORM.** Bill requests in and bills are being drafted in both the House and Senate.
- B. LICENSURE.** A meeting between various industry players and the Michigan Association of Realtors took place in February. MAR to respond with potential changes to draft legislation.
- C. SERVICE TAX.** As previously reported, Governor Granholm's 2% excise tax on certain services excluded rental payments. However, the bills as introduced in both the House and Senate included property management fees. The proposal appears dead for now due to a lack of public and legislative support. However, we expect proposals in the near future to expand the base of the existing sales tax to include some services.
- D. DOMESTIC VIOLENCE TERMINATION.** As previously reported, Sen. Valde Garcia (R-Howell) has re-introduced a bill (SB 103, referred to Judiciary Committee) to allow lease termination by victims of domestic violence under certain circumstances. Sen. Garcia appears determined to pass a bill this session and he has afforded PMAM the opportunity to provide substantial input on the bill. Verbal update to be provided at March 27, 2007 meeting.
- E. "VACANCY LOSS" REFORM RE-INTRODUCED.** The governor has made reform of the "vacancy loss" rule a component of her fiscal recovery plan. As you know, Proposal A mandates that an owner of commercial property may receive a decreased assessment based on decreased occupancy rates. However, due to the so-called "WPW" court case assessments are not similarly increased once occupancy rates go up. You may recall that we worked with various interest groups on a reform package in 2005 which was ultimately vetoed by the governor. HBs 4375-76 introduced by Rep. Paul

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Condino (D-Southfield) are slated for a hearing in the House Tax Policy Committee the week of March 26, 2007. See bill summary at Attachment A.

- F. **CHANGE ADDRESS NOTICE. HB 4394** introduced by Rep. Steil (R-Cascade) and referred to the Regulatory Reform Committee would require a tenant to use registered mail/return receipt requested upon termination of occupancy. See Attachment B.

## **II. OTHER ISSUES FOR DISCUSSION & MONITORING**

- A. **ANN ARBOR ORDINANCE**
- B. **CITY OF DETROIT/DUMPSTERS**
- C. **EVICTION REFORM**
- D. **DEATH OF TENANT/PROBATE AMENDMENT**
- E. **SOURCE OF INCOME**
- F. **NON-ATTORNEY REPRESENTATION**
- G. **FUND-RAISING/PAC**
- H. **LEGISLATOR/PUBLIC OFFICIAL-OF-THE YEAR AWARD**

ATTACHMENT A**House Bill 4375 and 4376: Commercial Rental Property Specific Tax**

Together, the bills would put in place a new method of taxing commercial rental property by exempting such property from general ad valorem property taxes under the General Property Tax Act, and levying a new specific tax on that property instead. House Bill 4376 would amend the General Property Tax to exempt commercial rental property beginning December 31, 2007. House Bill 4375 would create a new act, the Commercial Rental Property Specific Tax, to impose the specific tax on commercial rental property.

In general, the bills do not appear to treat commercial rental differently from current law. However, the bills appear to address the Michigan Supreme Court's May 2002 decision in *WPW Acquisition v. City of Troy* (466 Mich 117, Docket No. 118750), in which the court said that an increase in value in a property's occupancy rate could not increase the property's taxable value beyond the constitutional assessment cap.

House Bill 4375 (The Proposed Commercial Rental Property Specific Tax)

Under House Bill 4375, local assessors each year would be required to determine the value and adjusted taxable value of a parcel of commercial rental property by December 31<sup>st</sup>. Property would be assessed at 50 percent of its true cash value. In general, the adjusted taxable value of the property would be the lesser of the following:

- Current state equalized value (SEV)
- Adjusted taxable value in the previous years, adjusted for any losses and any occupancy loss, multiplied by five percent or the rate of inflation, and adjusted for any additions and any occupancy addition.

For 2008, a property's adjusted taxable value in the immediately preceding year would be the sum of (1) the taxable value the property would have had in 2008 if the property had been subject to general ad valorem property taxes and (2) any addition that would have been attributable to an increase in occupancy rate occurring after May 14, 2002 and before the bill's effective date, notwithstanding the State Supreme Court's *WPW* decision. Beginning in 2008, if a property's taxable value is adjusted to reflect an occupancy loss, the property owner would have to file, by January 15<sup>th</sup>, a copy of the rent roll or a sworn statement of the square footage of occupancy as of the immediately preceding December 31.

After 2008, a property's adjusted taxable value would "pop-up" to the state equalized value, and would then be subject to the assessment cap until the next

transfer of ownership. Assessments could be appealed in the same manner as provided under the General Property Tax Act.

The tax rate would be the number of mills assessed in the local tax collecting unit as if that property were subject to the General Property Tax Act, and the base would be the adjusted taxable value. The tax would be payable in the same manner as taxes collected under the General Property Tax Act. Property located within a renaissance zone would be exempt from the specific tax, except for special assessments, debt millages, school enhancement millages, and school building sinking fund millages.

Tax revenue would be disbursed by the tax collecting unit to other taxing units in the same manner as provided under the General Property Tax Act. Unpaid taxes would be subject to foreclosure, forfeiture, and sale in the same manner as provided under the General Property Tax Act.

House Bill 4376 (General Property Tax Act)

The bill would exempt commercial rental property from the General Property Tax Act if the owner previously claimed an occupancy loss and filed an affidavit with the local tax collecting unit claiming an exemption. The affidavit would have to be filed by (1) the December 31 of the year immediately after the year in which the bill becomes effective for property currently in existence; (2) the December 31 of the year in which new property is constructed; or (3) the December 31 of the year immediately following a year in which a transfer of ownership occurred, if an exemption was not previously claimed. Property owners would be required to file a form rescinding an exemption within 90 days from when that that property is no longer considered commercial rental property. Failure to file a rescission would be a penalty of \$5 a day, up to \$200, for each day after the 90-day period. The penalty would be deposited in the School Aid Fund.

Assessors could deny an exemption claim for the current year and the preceding three years. If an exemption is denied, the tax roll would be amended to reflect the denial and a corrected tax roll would be issued. Taxes levied would be delinquent on March 1<sup>st</sup> of the year immediately after the year in which the corrected tax bill is issued. If the property is transferred to a bona fide purchaser before a corrected bill is issued, the tax would not be a lien against the property and would not be billed to the purchaser, but would be assessed against the previous owner who claimed the exemption.

In addition, the bill would amend current law concerning occupancy losses and additions (MCL 211.34d) to specify that an occupancy loss may be taken prior to May 14, 2002 (the date of the *WPW* decision) and that an occupancy addition may be taken prior to December 31, 2007.

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Background Information

Under the state constitution, as amended by Proposal A in 1994, year-to-year increases in the taxable value of a parcel of property are generally limited to five percent or the rate of inflation, whichever is lower. However, the value of property may be adjusted for certain additions and losses, irrespective of the assessment cap. Under the General Property Tax Act, the term "losses" includes, among other things, an adjustment in value because of a decrease in a property's occupancy rate. Similarly, the term "additions" includes an increase in the value attributable to an increase in the property's occupancy rate if a loss was previously allowed because of a decrease in occupancy rate or if the value of new construction had been reduced because of a below market occupancy rate.

In *WPW Acquisition v. City of Troy*, the State Supreme Court held that the additional value attributable to an increase in a property's occupancy rate was not consistent with Proposal A, and therefore was unconstitutional. At the time Proposal A was approved by the voters, the terms "additions" and "losses," as defined in the General Property Tax Act, did not encompass any increase or decrease in value because of a change in a property's occupancy rate. The current definitions, as applied to tax years after 1994, were added to the General Property Tax with the enactment of Public Act 415 of 1994, an act implementing Proposal A. The court noted that if the legislature were free to classify increases in value as "additions," it could undermine one of the intended purposes of Proposal A—to limit property taxes. As a result of the court's decision, under current law, a property's taxable value can be reduced because of a decrease in occupancy rate, but cannot increase when the occupancy rate subsequently increases.

ATTACHMENT B/HB 4394

A bill to amend 1972 PA 348, entitled

"An act to regulate relationships between landlords and tenants relative to rental agreements for rental units; to regulate the payment, repayment, use and investment of security deposits; to provide for commencement and termination inventories of rental units; to provide for termination arrangements relative to rental units; to provide for legal remedies; and to provide penalties," by amending section 11 (MCL 554.611).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 11. The tenant shall notify the landlord in writing USING

REGISTERED MAIL RETURN RECEIPT REQUESTED OR CERTIFIED MAIL RETURN

RECEIPT REQUESTED at the address given under section 4-3 within 4

10 days after termination of his OR HER occupancy of an address at

which communications pursuant to this act may be received. Failure

to comply with this requirement relieves the landlord of the

requirement of notice of damages. ~~but does not prejudice a tenant's~~

~~subsequent claim for the security deposit.~~