

YOUR ACCOUNT BALANCE IS DUE—PAY UP OR GET OUT: STREAMLINING THE EVICTION PROCESS IN MICHIGAN

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I. INTRODUCTION

In 2009, three million households faced foreclosure.¹ Shortly after President Obama took office in 2009, he was forced to act on this growing housing crisis.² His solution to the housing crisis costs billions of dollars.³ This Note proposes a different solution. Instead of throwing money at the problem, which promises to only grow as its secondary effects are felt in the rental market,⁴ this Note advocates for changing Michigan eviction law for nonpayment of rent toward a more pro-landlord position through the creation of a new government agency. This governmental agency will handle the leasing process and eviction for nonpayment of rent in order to entice landlords to enter the rental market. This would alleviate the rental crisis and, through the influx of landlords seeking to purchase rental units, also alleviate the housing crisis.

II. BACKGROUND

A. Michigan Law on Residential Lease Eviction for Nonpayment of Rent

Michigan eviction law is governed by statute found in the Michigan Compiled Laws Annotated (M.C.L.A.) sections 600.5701 through 600.5795.⁵ The road to understanding how the Michigan process for eviction based on nonpayment of rent works begins with M.C.L.A. section 600.5714.⁶ There are multiple grounds for summary eviction,

1. Les Christie, *Record 3 Million Households Hit with Foreclosure in 2009*, CNNMONEY.COM, Jan. 14, 2010, http://money.cnn.com/2010/01/14/real_estate/record_foreclosure_year/.

2. *Homeowner Affordability and Stability Plan: Obama Administration's Home Mortgage Crisis Fact Sheet*, WASH. POST, Feb. 18, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/18/AR2009021801159.html>.

3. *Id.*

4. Andrea B. Carroll, *The International Trend Toward Requiring Good Cause for Tenant Eviction: Dangerous Portents for the United States?*, 38 SETON HALL L. REV. 427, 448 (2008).

5. M.C.L.A. section 600.5701 is the definitions section. M.C.L.A. section 600.5704 explains which jurisdiction governs in a summary proceeding to recover possession of premises. M.C.L.A. section 600.5706 sets out the venue for a summary proceeding to recover possession of premises. M.C.L.A. section 600.5708 gives the rules used in the procedure of a summary proceeding for recovery of possession of the premises, and M.C.L.A. section 600.5711 explains the authorization and the manner of entry upon realty.

6. MICH. COMP. LAWS ANN. § 600.5714 (West 2009).

(1) A person entitled to premises may recover possession of the premises by summary proceedings in the following circumstances:

(a) When a person holds over premises after failing or refusing to pay rent due under the lease or agreement by which the person holds the premises within 7 days from the service of a written demand for possession for nonpayment of the rent due. For the purpose of this subdivision, rent due does not include any accelerated indebtedness by reason of a breach of the lease under which the premises are held.

(b) When a person holds over premises for 24 hours following service of a written demand for possession for termination of the lease pursuant to a clause in the lease providing for termination because a tenant, a member of the tenant's household, or other person under the tenant's control has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. This subdivision applies only if a formal police report has been filed by the landlord alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. For purposes of this subdivision, "controlled substance" means a substance or a counterfeit substance classified in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the public health code, 1978 PA 368, MCL 333.7211 to 333.7216.

(c) When a person holds over premises in 1 or more of the following circumstances:

(i) After termination of the lease, pursuant to a power to terminate provided in the lease or implied by law.

(ii) After the term for which the premises are demised to the person or to the person under whom he or she holds.

(iii) After the termination of the person's estate by a notice to quit as provided by section 34 of 1846 RS 66, MCL 554.134.

(d) When the person in possession willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises, which was discovered or should reasonably have been discovered by the party seeking possession not earlier than 90 days before the institution of proceedings under this chapter and when the person in possession neglects or refuses for 7 days after service of a demand for possession of the premises to deliver up possession of the premises or to substantially restore or repair the premises.

(e) When a person takes possession of premises by means of a forcible entry, holds possession of premises by force after a peaceable entry, or comes into possession of premises by trespass without color of title or other possessory interest.

(f) When a person continues in possession of premises sold by virtue of a mortgage or execution, after the time limited by law for redemption of the premises.

(g) When a person continues in possession of premises sold and conveyed by a personal representative under license from the probate court or under authority in the will.

(2) A tenant or occupant of housing operated by a city, village, township, or other unit of local government, as provided in 1933 (Ex Sess) PA 18, MCL 125.651 to 125.709c, is not considered to be holding over under subsection

such as: drug possession,⁷ the lease provides for it,⁸ the term of the lease has expired,⁹ the tenant is causing a health hazard or damage to the premises,¹⁰ and several others. Most important for the purposes of this Note, however, is nonpayment of rent.¹¹ The landlord can only start the summary proceedings for recovery of possession of the premises for nonpayment of rent if the tenant, while still occupying the premises, fails or refuses "to pay rent due under the lease or agreement" within seven days after the landlord gives written service demanding the premises or payment of the rent.¹²

This written service demanding possession or payment of the rent cannot be a mere post-it note on the door saying, "pay up or get out." Rather, it must be more formal. It must be in writing, addressed to the tenant, give the address or description of the property, give the reasons for the demand, state "the time to take remedial action," and be dated and signed "by the person entitled to possession, his attorney, or agent."¹³ Furthermore, this written service, when used to demand possession for nonpayment of rent, must also include the "amount due [under the terms of the lease] at the time of the demand."¹⁴ This service of demand for possession can either be delivered in person to the "person in possession" of the premises, or mailed to that person.¹⁵

If the tenant fails to either vacate the premises or pay the amount of rent due within the seven-day window following the service of demand for possession or payment, then the landlord must begin court action by filing a summons at the district court house.¹⁶ The landlord must then

(1)(b) or (c) unless the tenancy or agreement has been terminated for just cause, as provided by lawful rules of the local housing commission or by law.

(3) A tenant of a mobile home park is not considered to be holding over under subsection (1)(b) or (c) unless the tenancy or lease agreement is terminated for just cause pursuant to chapter 57a.

MICH. COMP. LAWS ANN. § 600.5714 (West 2009).

7. *Id.* § 600.5714(1)(b).

8. *Id.* § 600.5714(1)(c)(i).

9. *Id.* § 600.5714(1)(c)(ii).

10. *Id.* § 600.5714(1)(d).

11. *Id.* § 600.5714(1)(a).

12. MICH. COMP. LAWS ANN. § 600.5714(1)(a).

13. *Id.* § 600.5716.

14. *Id.*

15. *Id.* § 600.5718. Delivery can also occur by delivering it to a "member of his family or household or an employee, of suitable age and discretion, with a request that it be delivered to the person in possession." If the service of demand is mailed, then the date of the service is the "next regular day for delivery of mail after the day when it was mailed." *Id.*

16. *Id.* § 600.5735. In order for the landlord to file a summons, several pieces of paper must also be filled out. In the district court for Genesee County (the county

find “any officer or person authorized to serve process of the court” to serve the defendant—the tenant still in possession of the premises.¹⁷ The summons, which must be served “not less than [three] days before the date set for trial,” commands the tenant to appear for trial “[w]ithin [ten] days of the issuance date of the summons.”¹⁸ Once the tenant appears for trial, a summary proceeding will take place within seven days.¹⁹ This summary proceeding cannot be put off beyond this seven days unless the parties stipulate to it.²⁰

In these summary proceedings, either the landlord or the tenant can demand a jury trial.²¹ Furthermore, either the landlord or the tenant can join claims or counterclaims; however, the court can “order separate summary disposition of the claim for possession, without prejudice to any other claims or counterclaims.”²²

encompassing the city of Flint), the landlord must not only complete the summons, but also the complaint of nonpayment of rent, the demand for possession for nonpayment of rent, the judgment sheet for nonpayment of rent, and the order of eviction (so all the judge has to do is sign it). See 67th District Court Landlord/Tenant Matters, http://www.co.genesee.mi.us/districtcourt/Civil_filings/Landlord_tenant.htm (last visited Nov. 29, 2010). Furthermore, the landlord must pay a \$45 filing fee that is statutorily required. MICH. COMP. LAWS ANN. § 600.5756(1).

17. MICH. COMP. LAWS ANN. § 600.5735. In Genesee County, the landlord must also pay a \$25 service fee. See *supra* note 16.

18. MICH. COMP. LAWS ANN. § 600.5735(2)(b). This rule is not absolute because section 600.5735(4) provides that local rule may command the appearance of the defendant for trial “[w]ithin 5 days after service of the summons.” *Id.* § 600.5735(4).

19. *Id.* § 600.5735(6).

20. *Id.*

21. *Id.* § 600.5738. This seems like it would be used mostly by the tenants in a summary proceeding for eviction for nonpayment of rent, as a landlord would not want to lengthen the eviction process by demanding a jury trial and then waiting for the selection process and impaneling of the jury.

22. *Id.* § 600.5739(1). Section 600.5739 provides in its entirety:

(1) Except as provided by court rules, a party to summary proceedings may join claims and counterclaims for money judgment for damages attributable to wrongful entry, detainer, or possession, for breach of the lease or contract under which the premises were held, or for waste or malicious destruction to the premises. The court may order separate summary disposition of the claim for possession, without prejudice to any other claims or counterclaims. A claim or counterclaim for money judgment shall not exceed the amount in controversy that otherwise limits the jurisdiction of the court.

(2) If the court awards damages for physical injury to the premises under subsection (1) by making an award for or based on the cost of repairs, the court shall award damages for labor expended by a landlord or property manager in repairing the premises in the same manner as it would if the repairs were performed by a third party. A landlord’s or property manager’s labor under this subsection shall be compensated at a rate the court determines to be reasonable based on usual and customary charges for the repairs.

If the court finds that the landlord²³ "is entitled to possession of the premises" because the tenant failed to pay the rent due "under a tenancy," then the court will determine the "amount due or in arrears at the time of trial" and that amount is "stated in the judgment for possession."²⁴ This amount that is stated in the judgment for possession is the amount "together with taxed costs" that the tenant must pay in order to prevent being removed from the premises through a writ of restitution.²⁵

Once the judgment for possession is entered, the tenant has ten days to pay the amount stated in the judgment for possession.²⁶ If the tenant fails to pay the stated amount in the judgment for possession within those ten days, then the writ of restitution²⁷ is entered into judgment.²⁸ However, under special circumstances, the writ of restitution can be entered into judgment immediately following the judgment for possession as long as such special circumstances are "pleaded and proved, with notice, to the satisfaction of the court."²⁹ These circumstances are based on some other wrongdoing by the tenant, such as: when the tenant is continuing a health hazard, when the tenant is causing injury to the premises, when the tenant is holding possession "unlawfully . . . by force," and when the tenant "came into possession by trespass."³⁰ The writ of restitution can also be postponed "[i]f an appeal is taken or a motion for new trial is filed" during the ten-day waiting period between the judgment for possession and the writ of restitution

(3) If the court determines that the landlord breached the lease or contract under which the premises were held by failing to repair the premises and awards damages under subsection (1) by making an award for or based on the cost of repairs, the court shall award damages for labor expended by the tenant in repairing the premises in the same manner as it would if the repairs were performed by a third party. A tenant's labor under this subsection shall be compensated at a rate the court determines to be reasonable based on usual and customary charges for the repairs.

Id. § 600.5739.

23. If the court finds for the tenant as a result of the landlord failing to "prosecute his complaint, or if upon trial or motion the [landlord] is found not entitled to possession of the premises, judgment shall be rendered for the [tenant] for his costs." MICH. COMP. LAWS ANN. § 600.5747.

24. *Id.* § 600.5741. In making the determination of the amount due, the judge not only takes into consideration the amount of rent in arrears by the tenant, but also whether or not the landlord has breached the lease or any statutory covenants.

25. *Id.*

26. *Id.* § 600.5744(4).

27. "A fee of \$15.00 shall be charged for each writ of restitution." *Id.* § 600.5757.

28. *Id.* § 600.5744.

29. MICH. COMP. LAWS ANN. § 600.5744.

30. *Id.*

can be entered and “if a bond to stay proceedings is filed.”³¹ If these two requirements are satisfied then the waiting period between the judgment for possession and the writ of restitution “shall be tolled until the disposition of the appeal or motion for new trial is final.”³²

After the ten-day waiting period has run, the landlord can request the judge to sign the writ of restitution.³³ Once the judge has signed the writ of restitution, the landlord must then have a permitted official (e.g. sheriff or police officer)³⁴ execute the order of eviction in order to regain possession of the premises.³⁵

B. The Current Rental Crisis

Starting in 2007, America began to feel the beginning of a housing crisis that would show its true force in 2008 and the beginning of 2009.³⁶ This housing crisis was the result of a booming housing market and subprime mortgages.³⁷ These mortgages resulted in homeowners owing

31. *Id.*

32. *Id.*

33. Rental-Housing Clinic at Michigan State University—Detroit College of Law, *Tenants and Landlords: A Practical Guide*, at 17, <http://www.legislature.mi.gov/documents/publications/tenantlandlord.pdf> (last visited Nov. 29, 2010).

34. MICH. CT. R. 3.106 (West 2009). Under this rule, only the people named in Michigan Court Rule 2.103(B) are able to execute the order of eviction. Section 2.103(B) of the Michigan Court Rules of 1985 provides the following:

A writ of restitution or process requiring the seizure or attachment of property may only be served by

(1) a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose,

(2) an officer of the Department of State Police in an action in which the state is a party, or

(3) a police officer of an incorporated city or village in an action in which the city or village is a party.

A writ of garnishment may be served by any person authorized by subrule (A).

Id. § 2.103(B). Landlord self-help is not allowed.

35. Michigan State University—Detroit College of Law, *supra* note 33, at 19. This guide, available on the Michigan government website, conveniently offers a timeline in the form of a chart that shows the duties, responsibilities, and rights of both parties at every stage of the eviction process. The document also gives sample forms and has a commonly asked questions section along with answers.

36. David Leonhardt, *For Housing Crisis, the End Probably Isn't Near*, N.Y. TIMES, Apr. 22, 2009, at B1.

37. Samanta Parks, *The Subprime Mortgage Crisis: How Did It All Start?*, FORECLOSUREDATAONLINE (Nov. 19, 2007), <http://foreclosuredataonline.com/blog/foreclosure-crisis/the-subprime-mortgage-crisis-how-did-it-all-start/>.

more on their monthly housing payments than they were able to afford.³⁸ As a result of these mortgages, millions of homeowners were faced with foreclosure.³⁹ A housing crisis in which homeowners lose their houses to foreclosure has historically been followed by a rental crisis in which there is a shortage of rental units.⁴⁰ This scenario results because these homeowners, who have been forced into foreclosure, have had their credit devastated.⁴¹ With their credit score too low to procure a mortgage to purchase another house, former homeowners are forced to rent.⁴² Thus, a housing crisis creates an influx in renters and this creates a shortage of available rental units—a rental crisis. This means that unless circumstances change, this housing crisis will continue to wreak havoc with its force being intensified by the rental crisis that history predicts will follow.⁴³

III. ANALYSIS

A. How Current Michigan Statutory Law Governing Residential Evictions for Nonpayment of Rent is Pro-Tenant Through Both Statute and Application

Michigan residential eviction law for nonpayment of rent is pro-tenant at several steps of the eviction process. Some aspects of Michigan residential eviction law are pro-tenant on the face of the statute itself, and other aspects are only pro-tenant through their application.

1. How Current Michigan Statutory Law Governing Residential Evictions for Nonpayment of Rent is Statutorily Pro-tenant.

The first step in the eviction process is having the grounds for a summary eviction proceeding. Michigan statutory law provides for a

38. *Id.*

39. Christie, *supra* note 1.

40. Carroll, *supra* note 4, at 427-28.

41. A foreclosure can lower a credit score by 200-300 points. Elizabeth Weintraub, *Short Sale and Foreclosure Effects on Credit*, ABOUT.COM, <http://homebuying.about.com/od/4closureshortsales/qt/060907SScredit.htm> (last visited Nov. 29, 2010); Nina Silberstein, *How Foreclosure Affects Your Credit Score and Your Life*, AOL REAL ESTATE, http://realestate.aol.com/article/credit/_a/how-foreclosure-affects-your-credit-score/2009041001 (last visited Nov. 29, 2010).

42. See generally *Understanding Why Foreclosures Matters: Families Displacement and Housing Instability*, FORECLOSURE-RESPONSE.ORG, http://www.foreclosure-response.org/policy_guide/why_foreclosures_matter.html?tierid=258 (last visited Nov. 29, 2010).

43. *Id.*

summary eviction for nonpayment of rent to commence seven days after the service of a written demand for possession.⁴⁴ This seems reasonable and neutral at first, but compared to the other grounds for summary recovery of possession, this waiting period becomes arbitrary and pro-tenant.

For example, the very next subsection in the statute provides for only a twenty-four-hour waiting period following the demand for possession to begin the summary proceedings as long as a “police report has been filed by the landlord alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises.”⁴⁵ Although the landlord might want the tenant out of the rental unit for not only breaking a term of the lease but also for conducting illegal activity on the premises, the chances are pretty high that the tenant is still paying the rent.⁴⁶ While a landlord does not want drug dealing taking place on their property, at the same time, a small landlord depends on the rent generated each month from the rental property to maintain that property and even avoid debt or foreclosure.⁴⁷ In short, a landlord can easily suffer more harm from a nonpaying tenant than from a drug-dealing tenant, yet the law allows the nonpaying tenant to remain in the rental unit longer than the drug-dealing tenant.⁴⁸ This is not pro-landlord.

This same statute also requires a landlord to wait seven days past the service of written demand for possession to begin summary proceedings against a tenant who is causing a health hazard to exist on the premises

44. MICH. COMP. LAWS ANN. § 600.5714(1)(a) (West 2009). See also *supra* note 5.

45. MICH. COMP. LAWS ANN. § 600.5714(1)(b). See also *supra* note 6.

46. This makes sense since the tenant would not want to be caught conducting this illegal activity, and not paying the rent is a sure way to be caught by the landlord, who might go to the rental house to have a conversation about the late rent. Furthermore, if the tenant is dealing drugs, it is also likely that the tenant has money with which to pay the rent.

47. Brian Delaney, in his article *Landlord-Tenant Law: Protecting the Small Landlord's Rights During the Summary Process*, pointed out that “[m]ost landlords, especially owner-occupants, rely heavily on rental income to subsidize mortgage payments, property taxes, and other general expenses necessary to maintain the residence;” he further emphasized that “[a] long delay in the summary process could force these small landlords into foreclosure or even homelessness.” Brian Delaney, *Landlord-Tenant Law: Protecting the Small Landlord's Rights During the Summary Process*, 37 SUFFOLK U. L. REV. 1109, 1110 (2004). See also Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self Help*, 41 UCLA L. REV. 759, 766-67 (1994) (pointing out that landlords often have ongoing financial obligations tied to the rental unit and therefore the quick replacement of a nonpaying tenant is essential).

48. This results from comparing M.C.L.A. section 600.5714(1)(b) with section 600.5714(1)(a).

or who is causing “extensive and continuing physical injury to the premises.”⁴⁹ It is definitely pro-tenant to allow a tenant who is causing a health hazard or destroying the rental unit to remain there for longer than is absolutely necessary because for every day that the tenant remains in the rental unit, the landlord’s losses continue to increase.⁵⁰

Even if the tenant continues to pay rent, the damage to the property can easily surpass the security deposit in repair costs, leaving the landlord with the burden of pursuing the cost of these damages in small claims court.⁵¹ It would be better for both the landlord and for the congested court system to minimize the need to go after these costs by stopping the destruction of the property as soon as possible.⁵² Even the speediest eviction in Michigan takes a minimum of twenty-seven days.⁵³ That is almost a month more that a tenant can continue to reside in a residence without paying rent and/or while destroying the place.⁵⁴

When the majority of evictions are for nonpayment of rent⁵⁵ and other negative effects, such as financial trouble of the landlord, destruction of the residence, and further litigation beyond the summary proceedings, it is in the landlord’s best interest to have a speedy summary eviction process. Therefore, it is unfair from the perspective of

49. MICH. COMP. LAWS ANN. § 600.5714(1)(c). *See also supra* note 6.

50. *See* Gerchick, *supra* note 47, at 766-67. The author states that the eviction process needs to move swiftly in order to minimize the landlord’s losses resulting from nonpayment of rent or breaching the lease through things like excessively damaging the rental unit. *Id.* at 804. Gerchick also points out that relying on the security deposit to reimburse the landlord for the eviction process is problematic. *Id.* “[L]andlords also rely upon security deposits to protect themselves from the tenant’s unpaid utility bills and damage to the rental unit. If landlords were to apply the full amount of the security deposits towards rent losses, they would have no funds to cover other tenant-related expenses.” *Id.*

51. *See supra* note 50.

52. This makes sense since not only does it minimize losses to the landlord if the landlord chooses not to file a lawsuit, but it also avoids a second tort lawsuit for damages aside from the eviction lawsuit if the landlord chooses to go after the tenant for damages.

53. Michigan State University—Detroit College of Law, *supra* note 33, at 19. The eviction process can take up to 57 days to evict a tenant.

54. Often times a tenant being evicted for nonpayment of rent will turn into a tenant who also destroys the residence. The tenant takes the time during which the eviction process takes place to “stick it to [the] landlord” for evicting them. Michael C. Gottesman, *End Game: Understanding the Bitter End of Evictions*, 8 CONN. PUB. INT. L.J. 63, 63 (2008) (describing a tenant who, having good relations with her landlord up until the point of eviction, had “ripped some cabinets off the wall, allowed her daughter to write on the doors and walls, . . . [and left] all [of her] possessions in order to create a high moving bill for the landlord”).

55. *Id.* at 63, 69-70. Gottesman did a study of New Haven, Conn., and found that 93 percent of evictions were for nonpayment of rent and only 2 percent of evictions were for violating the terms of the lease.

the landlord to have to wait seven days after the service of demand of the premises in order to begin summary proceedings against tenants who are not paying the rent and destroying the property, but only have to wait twenty-four hours for tenants who are dealing in controlled substances (and who are probably still paying the rent).⁵⁶ It is pro-tenant for the law to allow a person who is not paying for their housing or destroying it to remain there for an extra six days. Housing is not a fundamental right.⁵⁷ Therefore, it is not violative of any of a tenant's fundamental rights to have only a twenty-four-hour waiting period regardless of the grounds for the summary proceeding. That, however, is not the law. The law in this respect is pro-tenant. This law is even more pro-tenant when looking at the fact that most landlords will not immediately start the eviction process, but rather, give the tenant time to "cure his fault" before beginning the litigation process.⁵⁸

2. How Current Michigan Statutory Law Governing Residential Evictions for Nonpayment of Rent is Pro-Tenant Through Its Application.

The next step in the eviction process is the summons.⁵⁹ This step is not blatantly pro-tenant. However, the landlord still has a small disadvantage. The landlord must complete multiple forms and pay for not only filing these forms but also a service fee.⁶⁰ Although this fee is nominal, it is another loss the landlord must suffer to get a nonpaying or destructive tenant out. "Furthermore, although the expedited eviction

56. Even though it makes sense from a public policy perspective to remove a person dealing in a controlled substance from a residence, a landlord is less concerned with public policy than with having the rent paid on time.

57. Robert Sedler, *The Settled Nature of American Constitutional Law*, 48 WAYNE L. REV. (SPECIAL ISSUE) 173, 279-80 (2002). Sedler cites the case of *Lindsey v. Normet* in which the Supreme Court "in effect held that the state could rationally treat actions to recover immediate possession of rental property differently from other actions, and could allow the landlord to obtain immediate possession, subject to the tenant's assertion of defenses to eviction at a later time." *Id.* at 279-80; *Lindsey v. Normet*, 405 U.S. 56 (1972).

58. Gerchick, *supra* note 47, at 767-68. Gerchick observes that the eviction process is a last resort especially for small landlords. As a result, the landlord is inclined to give the tenant lots of extra time to cure his fault—weeks, even months. So although Michigan law allows for the eviction process to start the day after a tenant's rent is late, that is not what happens in practice. Therefore, these waiting periods that the law provides the tenant to cure his fault are usually pointless because by that time, the tenant has dug his or her feet in the ground for the long haul of the eviction process.

59. MICH. COMP. LAWS ANN. § 600.5735.

60. Michigan State University—Detroit College of Law, *supra* note 33, at 51-64; *supra* note 16.

process takes less time and fewer resources than regular civil proceedings, landlord-tenant law is so specialized that most landlords desire or require an attorney's assistance."⁶¹ This is so because the majority of landlords in the market providing this "vital service to our society" are small landlords, who do not deal with eviction law often enough to forego an attorney's help.⁶² So, even though there are attempts to be pro-landlord by offering a summary proceeding, in practice, it fails because most landlords will end up paying attorney's fees which will only add to the landlord's growing losses which could end up bankrupting the small landlord.⁶³ This is not pro-landlord.

After the summons comes the ability of either party to join claims.⁶⁴ Looking to the statute, the law seems neutral.⁶⁵ However, in practice, this ability is often abused by tenants and mishandled by the court, causing this step to also be very pro-tenant. "For example, a tenant could choose not to pay the rent and then later, in bad faith, claim the landlord breached the implied warranty of habitability."⁶⁶ What makes it worse for the landlord is the fact that tenants frequently use this defense because it often works. "Usually, tenants must demonstrate they gave notice of these conditions to their landlord, but judges do not always enforce this requirement. Such laxity encourages unscrupulous tenants to set forth frivolous claims."⁶⁷ So, although the statutory law seems neutral, the way that it is carried out is very pro-tenant.

Once the court enters the judgment that the landlord is entitled to possession of the property, the landlord still has to give the tenant ten days to cure his fault before a writ of restitution can be signed and the order of eviction carried out.⁶⁸ This seems like a fair amount of time for a tenant to choose whether to stay and cure his fault or to leave and get the money necessary to cure his fault. However, this is also a dangerous game for the landlord because often a tenant will not take this time to cure his fault, but will instead take this time to destroy the landlord's

61. Gerchick, *supra* note 47, at 767.

62. *Id.* at 767-68.

63. *Id.* at 768.

64. MICH. COMP. LAWS ANN. § 600.5739.

65. *Id.* See also *supra* note 22. It is neutral on its face because it allows either party to join claims or counter claims.

66. Delaney, *supra* note 47, at 1110-11 (discussing how tenants abuse the "legislative safeguards protecting them from eviction without due process" and as a result landlords are finding it increasingly difficult to "evict tenants and regain possession of their property").

67. *Id.* at 1117 (footnotes omitted).

68. MICH. COMP. LAWS ANN. § 600.5744(4).

property.⁶⁹ The statute allows for the immediate entry of the writ of restitution when it is pleaded and proved that the tenant is destroying the premises.⁷⁰ The problem is that once the judgment for possession is entered, it is quicker for the landlord to wait the ten days to get the writ of restitution signed and the eviction order enforced than it is to start another summary proceeding for damage to the property.⁷¹ The landlord must stand by and wait to find out just how much damage the tenant has done (or discover it for the first time during the execution of the order of eviction). Then the landlord has to go to small claims court to try to get a judgment against the tenant for the damages, which often exceed the security deposit. This is not pro-landlord at all when a landlord is forced to stand back and helplessly watch his property be destroyed.

Finally, the last step of the process is the ability for an appeal.⁷² This seems fair from the perspective of our judicial system; however, looking at it from the perspective of the landlord dealing with a problematic tenant (e.g. not paying the rent or destroying the property) it begins to look not so fair. In order for the tenant to get an appeal, the tenant must post a bond to stay the proceedings,⁷³ which is good for the landlord since the bond is usually the rent due to the landlord for the time period needed for the appeal. However, it is also burdensome on the landlord in the sense that the landlord must continue to wait to regain entry onto the premises in order to prepare the premises for a new tenant and show the premises to a new tenant. Furthermore, this gives the tenant more of an opportunity to destroy the premises if that is his prerogative. This step in the judicial process, while necessary to protect the judicial process, also seems to lack safeguards that protect the landlord's property and rights as a landowner. This appellate process is not pro-landlord and very much pro-tenant.

From the waiting period between the service of demand of possession and the beginning of the summary proceedings,⁷⁴ to the summons,⁷⁵ to the joinder of claims and counterclaims,⁷⁶ to the

69. Gottesman, *supra* note 54, at 63. *See also supra* note 50.

70. MICH. COMP. LAWS ANN. § 600.5744(2)(e).

71. It would take twenty-seven days at the quickest to get the tenant out by starting another summary proceeding, which is much longer than the ten days that the landlord must wait to get the writ of restitution. Michigan State University—Detroit College of Law, *supra* note 33, at 19; MICH. COMP. LAWS ANN. § 600.5744(4).

72. MICH. COMP. LAWS ANN. § 600.5753.

73. *Id.*

74. *Id.* §§ 600.5716, 5718.

75. *Id.* § 600.5735.

76. *Id.* § 600.5739.

judgment,⁷⁷ to the writ of restitution,⁷⁸ and finally the appeal,⁷⁹ the landlord seems to be on the losing end of the stick. At every step of the way, through either law or application of the law, Michigan eviction law for nonpayment of rent is pro-tenant.

B. How a Shift in Michigan Law for Nonpayment of Rent from Pro-tenant to Pro-landlord Could Stop the Rental Crisis and Ease the Housing Crisis

1. Adding Landlords to the Rental Market through Incentives

The current rental crisis is fundamentally an effect of fewer landlords than tenants in the rental market. This seems like a simple problem to solve—just get more landlords to enter the rental market. However, how to actually accomplish this is not so simple. People need motivation. The housing riots of the 1960s in Michigan led to shifting of landlord-tenant law toward a more pro-tenant end of the spectrum.⁸⁰ The housing crisis of 2009 is the definitive point in our history that allows the shift back to a more pro-landlord end of the landlord-tenant law spectrum. Previous to this year's housing and rental crises, there had not been a defining reason to shift the law toward a more pro-landlord end of the spectrum, and so it has not moved from its pro-tenant position. However, this housing and rental crisis gives great reason to shift Michigan eviction law toward a more pro-landlord position for the simple reason of enticing more landlords into the market.

There are three main groups of people that a shift in eviction law to being more pro-landlord would affect: current landlords, past landlords, and future landlords.

A shift in eviction law to a more pro-landlord position might encourage current landlords, who own some rental property, to invest in more rental property. Since the law would no longer be against the landlord but instead favor the landlord, it would be easier to manage more houses.

Many landlords who retreated from the rental market after a "bad" eviction experience, worsened by the fact that the law was against them, may choose to re-enter the rental market if eviction law became more

77. *Id.* § 600.5741.

78. MICH. COMP. LAWS ANN. § 600.5744.

79. *Id.* § 600.5750, 5753.

80. Department of Natural Resources, *Study Michigan's Fair Housing Act of 1968 — Lesson Plan*, http://www.michigan.gov/dnr/0,1607,7-153-54463_18670_18793-53806--,00.html (last visited Nov. 29, 2009).

pro-landlord.⁸¹ These prior landlords are the easiest ones to entice back into the market through a change of law because they left based on the perceived unfairness of the current law against them.

The last group of potential landlords—first time landlords—might also be enticed into the market through a change in eviction law. These are people who have never entered the rental market before and have little knowledge of its inner workings. Before becoming a landlord, the potential landlord most likely will do some research on landlord tenant law. Through this research the prospective landlord will discover that “[f]or the small landlord unfamiliar with the proceedings, evicting a tenant can be the biggest single headache in owning residential rental property.”⁸² With this in mind, “owning residential real property [could become] so undesirable that individuals will seek to invest their money in other types of endeavors.”⁸³ The eviction law being more pro-landlord might tip the scales enough that the potential landlord decides to enter the market.

2. Protecting Tenants Through Supply and Demand

Making Michigan eviction law more pro-landlord will create enough of an incentive to encourage landlords to either enter the rental market or to augment their rental holdings. Thus, the supply of available rental units will increase. This does two things: it ensures that there is ample housing⁸⁴ and it provides a supply and demand protection for tenants. As the supply of landlords goes up, the demand of tenants will go down. That means that the landlords will be competing for tenants. It will force them to improve living conditions in order to appeal to the few tenants

81. Gerchick warned of this exact scenario when he wrote, “[t]he longer the litigation the greater the[] costs. The danger is that these . . . costs could make owning residential real property so undesirable that individuals will seek to invest their money in other types of endeavors, thereby decreasing the amount of funds invested in rental housing and possibly reducing the overall supply of housing available to tenants.” Gerchick, *supra* note 47, at 801.

82. *Id.*

83. *Id.*

84. *Id.* Gerchick points out that:

The eviction process must not become so financially and emotionally draining for landlords that it discourages new investment in low-and moderate-income rental housing or encourages greater increases in rental rates. If this were to happen, society’s efforts in preventing homelessness by assuring due process to tenants could ironically increase homelessness by making rental housing less available and affordable.

Id. at 771-72.

that are still looking for a place to live.⁸⁵ As long as there is enough incentive to entice landlords into the rental market, the free market should take care of tenant protections in the sense of better quality living conditions.⁸⁶ Shifting Michigan eviction law to be more pro-landlord would accomplish two important goals at once. It would ensure there is ample housing and eliminate the rental crisis, and it would offer better quality living conditions through supply and demand.

C. How a Shift in Michigan Law from Pro-Tenant to Pro-Landlord Could Ease the Housing Crisis

1. The Time for Investment is Ripe, but Few are Picking the Fruit

The current housing crisis is nowhere near over, especially since it is stuck in a vicious cycle. “The glut of foreclosed homes creates a self-reinforcing cycle. Falling prices lead to more foreclosures. Foreclosures lead to an excess supply of homes for sale. The excess supply then leads to further price declines.”⁸⁷ As of April 2009, “the chief economist at Goldman Sachs [said] that the ‘massive amount of excess supply’ means that home prices nationwide will probably fall an additional [fifteen] percent.”⁸⁸ Even though housing prices are falling, auction halls are not

85. Gerchick makes a similar point regarding security deposits. When the tenant supply exceeds that of rental units, landlords can demand higher security deposits, but when the supply of rental units exceeds that of tenants, then landlords have to “reduce the required security deposit in order to fill their vacant rental units.” *Id.* at 803. This note makes a similar argument but takes it a step further by arguing that supply and demand can affect more than just the amount of security deposit but can also affect the quality of the rental unit itself. This is not that big of a leap since landlords are only making money when there is a paying tenant in the rental unit, and as Gerchick points out, “[w]henver the supply of rental housing exceeds its demand, even the most experienced and prudent landlords might fail, due to no fault of their own, to keep all of their rental units occupied and productive.” *Id.* at 857.

86. This Note is not advocating doing away with all tenant protections. This Note is only advocating for Michigan eviction law, especially for nonpayment of rent, to move to a more pro-landlord position. All other tenant protections should remain in place, such as: the Civil Rights Act of 1866, the Fair Housing Act, Michigan Elliott-Larson Civil Rights Act, Michigan Persons with Disabilities Civil Rights Act, the Covenant of Quiet Enjoyment, and the Implied Warranty of Habitability. *See generally* 42 U.S.C.A. § 1982 (West 2009), 42 U.S.C.A. § 3604 (West 2009), MICH. COMP. LAWS ANN. § 37.2502 (West 2009), MICH. COMP. LAWS ANN. § 37.1502 (West 2009), MICH. COMP. LAWS ANN. § 600.2918 (West 2009), MICH. COMP. LAWS ANN. § 554.139 (West 2009).

87. Leonhardt, *supra* note 36, at B1.

88. *Id.* This fall of housing prices is not a short-term problem. *See generally* Charles Hugh Smith, *Housing Prices Forecast to Fall in 2010—and Could Keep Falling for Years*, DAILY FINANCE, Oct. 21, 2009, <http://www.dailyfinance.com/story/housing-prices->

filled with investors.⁸⁹ Now is the time for investors to purchase property at extremely low prices; however, there needs to be some sort of incentive to push people over the fear that the housing prices might continue to plummet. Rental property is a great incentive. Regardless of the property value, there is the ability to have steady income through rental payments.⁹⁰ Furthermore, there are also great tax incentives.⁹¹ If the Michigan eviction law became more pro-landlord to ensure a quick turnaround between a non-paying tenant and a paying tenant, investors might be more likely to become landlords, more likely to fill the auction halls, and more likely to purchase property thus helping the housing crisis.

2. The Domino Effect

If people could be encouraged to buy investment properties through incentives, then that would help alleviate the housing crisis. With property being so cheap right now⁹² due to the housing crisis and the rapid increase in foreclosed properties,⁹³ now is a great time for first time landlords to enter the rental market and for current landlords to increase the number of rental units. A primary example of how much a small incentive can affect the housing market is the history of Internal Revenue Code section 469.⁹⁴ To combat tax shelters in the mid-1980s, Congress created I.R.C. section 469 dealing with passive-activity losses.⁹⁵ As a

forecast-to-fall-in-2010-and-could-keep-fallin/19202847/ (arguing that the housing market will not return to 1998 levels until 2014).

89. Leonhardt, *supra* note 36, at B1.

90. Charrissa Cawley, *6 Reasons Why Rental Property Is Still A Good Investment*, NUWIRE INVESTOR (Feb. 18, 2010), <http://www.nuwireinvestor.com/articles/6-reasons-why-rental-property-is-still-a-good-investment-54.aspx>; see also *How to Build A Rental Property Money Machine*, VIRTUAL RENT PAYMENT, <http://www.virtualrentpayment.net/a37251-how-to-build-a-rental.cfm> (last visited Nov. 29, 2010).

91. See I.R.C. §§ 465, 469 (2006).

92. See Jonathan Oosting, *Home Values Plummet in Wayne County Too, Cutting into Property Tax Revenue*, MLIVE.COM (Feb. 03, 2010), http://www.mlive.com/news/detroit/index.ssf/2010/02/home_values_plummet_in_wayne_c.html.

93. See Amy Hoak, *Foreclosures Break Another Record in First Quarter: Mortgage Defaults Won't Slow Until Employment Improves: MBA Economist*, MARKETWATCH (May 28, 2009), <http://www.marketwatch.com/story/foreclosures-break-another-record-in-first-quarter>.

94. I.R.C. § 469 (2009).

95. Bruce Bulloch, Marian O'Connor & Julie M. Hardnock, *New Guidance for Passive Loss Relief*, COMMERCIAL INVESTMENT REAL ESTATE (May-June 1996), available at http://www.ciremagazine.com/article.php?article_id=671.

result, these rules “played a leading role in perhaps the largest real estate downturn in U.S. history.”⁹⁶ The reason that it affected real estate was because it affected people who were active in the real estate business such as landlords actively involved in rental property.⁹⁷ The real estate downturn was so bad that in 1994, Congress was forced to exempt “taxpayers [who were] actively involved in the real estate business[.]”⁹⁸ This example points out how small changes in incentives can produce huge swings in the real estate market. If Michigan eviction law were to become more pro-landlord, there might be enough of an incentive for the real estate market to reverse its current downtrend.

3. Is There Enough Protection?

The primary concern in shifting Michigan eviction law to pro-landlord, in order to ease the housing and rental crises, is whether it is worth the sacrifices in shifting the law away from pro-tenant.

Within Michigan eviction law, this Note has focused specifically on eviction for nonpayment of rent. It is very straightforward how a tenant can protect himself or herself from being evicted for nonpayment of rent—simply pay the rent on time. This Note is not advocating the removal of other protections. However, it suggests moving eviction law toward a more pro-landlord point. Being evicted for nonpayment of rent is something that, although the landlord initiates the process, is very much in the tenant’s hands. If the tenant pays the rent, he or she never gets to the point of eviction for nonpayment of rent. Furthermore, if the eviction process for nonpayment of rent becomes more pro-landlord, streamlined, and efficient, it would open up housing more quickly for tenants who want to rent and can actually afford the unit from which the previous tenants are being evicted. This would also help ease the rental crisis. Tenants can protect themselves from a more pro-landlord Michigan eviction law for nonpayment of rent by paying the rent.

D. The Shift in Michigan Law Should Be From Pro-Tenant to Pro-Landlord in Order to Ease the Rental Crisis and the Housing Crisis.

1. An Innovative Solution: A New Governmental Agency

Landlord-tenant law concerning eviction for nonpayment of rent is very similar from state to state with the differences amongst the states

96. *Id.*

97. *Id.*

98. *Id.*

being small. The main differences are the waiting periods between each of the steps in the eviction process and whether notice is required to start the eviction process.⁹⁹ Even the most pro-landlord states do not drastically deviate from the pro-tenant position of Michigan. Texas, for instance, only requires three days notice to vacate before commencing the summary eviction proceedings.¹⁰⁰ South Carolina does not require notice to start the summary eviction process, and if the “tenant fails to appear and show cause [why he should not be evicted] within ten days of service of process, [the] magistrate may issue [a] warrant of ejectment.”¹⁰¹ Mississippi, on the other hand, does require a three-day notice to begin the summary eviction proceeding.¹⁰²

The easy argument is to propose that Michigan eviction law take the form of pro-landlord states and just shorten the time periods between stages of the process, or disregard the requirement of notice before the summary eviction proceeding commences. However, with that proposition comes counter arguments that it disadvantages tenants. Instead, real innovative reform is necessary—reform that continues to protect tenants but that also creates enough of an incentive for landlords to enter the market.

In developing an innovative solution to the current state of Michigan eviction law for nonpayment of rent, one thing is essential: speed.

Economists suggest that the [speed of the process] has salutary effects on the housing market. A fast eviction procedure decreases the risk a landlord faces of losing a significant portion of his revenue stream; this, in turn, means that property asset values increase. Consequently, individuals have greater incentives to enter the market or continue in the market as landlords. Furthermore, faster eviction laws generally mean that rent will be lower, because the supply of housing available will be greater in the long run. A speedy procedure, thus, has putative benefits for prospective tenants, as well as for landlords.¹⁰³

Since the speed of an eviction is so essential to encouraging landlords to enter the market and also in providing more affordable and available housing for tenants, which would help ease the rental crisis, speed should be at the center of the eviction process. This speed must be actual. It must be present both in how the law is crafted and also how it is administered.

99. See RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 12.1 (1977).

100. *Id.*

101. *Id.*

102. *Id.*

103. Gottesman, *supra* note 54, at 66.

In order to get to the point that where Michigan eviction law for nonpayment of rent is speedy both in its statutory presence and in its application, a new governmental agency should be created.¹⁰⁴

2. *The Structure and Duties of the New Governmental Agency*

Landlords and tenants would contract their leasing agreement through this governmental agency. Such a governmental agency would facilitate the running of credit checks and prior rental history to help make the leasing experience more efficient and less risky for the landlord.¹⁰⁵

Once the lease is signed, this proposed agency would provide a number of ways for the tenant to pay the rent to the agency, such as on-line, by mail, over the phone, by cash, by credit card, or by check. The tenant would also be able to specify whether the rent should go directly to the landlord or be held in escrow. A portion of the rent would then be deducted based on a set percentage and kept by the governmental agency to cover operating costs, thus making it self-supporting. The remainder of the rent would then be directly deposited to the landlord's bank account. The tenant and the landlord would each get a receipt (by email for no charge or by mail with a fee to cover costs) detailing the transaction minus account numbers for privacy reasons.

If a tenant fails to pay rent, a grace period begins to run. After five days, the tenant is assessed a late charge and given notice¹⁰⁶ that after ten

104. Some states use special housing courts to deal with residential evictions. See generally Massachusetts Court System, Housing Court Department, <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/index.html> (last visited Nov. 29, 2010); Minnesota Judicial Branch, Housing Court, <http://www.mncourts.gov/district/4/?page=128> (last visited Nov. 29, 2010); New York State Unified Court System, New York Civil Court Housing Part, <http://www.courts.state.ny.us/courts/nyc/housing/index.shtml> (last visited Nov. 29, 2010). This Note does not take this path for a couple of reasons. The first reason is that the administrative agency that this Note proposes will be limited in its powers in order to keep administrative costs low. The second reason is that this administrative body will be free from the human compassion that can lead judges to drag out the eviction process in order to allow a family to remain in their house longer.

105. See generally Gerchick, *supra* note 47 at 788-89.

106. In order to comply with the Fourteenth Amendment due process requirement of notice as defined in *Mullane v. Central Hanover Bank & Trust Co.*, this notice will take the form of an immediate e-mail to the tenant but also a physical letter sent out to the tenant on the 5th day of nonpayment notifying the tenant of the fact that rent has not been paid for that month and to the legal repercussions that are to follow if rent is not paid. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950) (requiring that notice must be "reasonably calculated, under all the circumstances, to apprise interested

days another late charge will be assessed and reminding the tenant that after twenty-seven days¹⁰⁷ the tenant will be evicted and immediately and forcibly removed from the premises. This same notice¹⁰⁸ is sent every five days with a final notice¹⁰⁹ being delivered after twenty days of nonpayment of rent reminding the tenant that they have one week to either pay the rent or vacate the premises. These proceedings can be stopped immediately through either payment of the back rent plus the late fees or proof through receipt that the rent was in fact paid.

On the twenty-seventh day of nonpayment, the order of ejectment is rubber-stamped and a state official with appropriate power arrives on the premises to serve the order and remains until the tenant and all of the tenant's belongings are completely removed from the residence. The landlord would still be responsible for paying for the removal.

3. How the New Governmental Agency Would Solve the Rental and Housing Crises.

This governmental agency would make becoming a landlord less of a daunting thought. It would provide the support and information needed for a first time landlord entering the market to feel comfortable knowing that they are not alone in the venture.

This governmental agency would also facilitate the transfer of money while keeping accurate records. This would ensure that evictions for nonpayment of rent, which make up the majority of all evictions,¹¹⁰ no longer clog up the court system, but instead are quickly and fairly resolved. To be clear, this governmental agency would only have power to evict for nonpayment of rent—an almost mathematical eviction. It would not be able to evict for any other reason, while all other types of evictions would remain with the court system as it currently exists. This system would eliminate tenant's frivolous lawsuits aimed at stalling the

parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, . . . and it must afford a reasonable time for those interested to make their appearance") (citations omitted).

107. Twenty-seven days is the quickest an eviction for nonpayment of rent can take place under current Michigan law. Michigan State University—Detroit College of Law, *supra* note 33, at 19.

108. This notice would only take on the form of an e-mail. Since the tenant has already received written notice of the eviction process, this e-mail notice is more of a reminder.

109. This notice would again take the form of both an e-mail and a letter. It would preferably be sent via certified mail to ensure that lack of notice would not become a defense to the eviction.

110. Gottesman, *supra* note 53, at 69-70.

eviction process.¹¹¹ An eviction would only occur through this governmental agency when the rent has not been paid.

This governmental agency is also beneficial in the sense that it is an intervening third-party that is doing the eviction process. This makes the eviction process less personal because it is almost automatic, and, as a result, the tenant will be less likely to be vindictive toward the landlord resulting in less destruction of property.¹¹²

IV. CONCLUSION

In the 1960's, Michigan was faced with the need to make landlord-tenant law more pro-tenant.¹¹³ The riots forced their hand. In the late 2000s, Michigan was faced with two more crises—the housing crisis followed by the rental crisis. The need for a change in landlord-tenant law in order to alleviate these two crises is paramount. A shift in Michigan eviction law for nonpayment of rent from a pro-tenant position to a pro-landlord position can be accomplished through the creation of a governmental agency that would oversee the leasing process and the eviction for nonpayment of rent process. This governmental agency would make Michigan eviction law for nonpayment of rent pro-landlord without sacrificing other tenant protections that resulted from the riots.¹¹⁴ This pro-landlord governmental agency would not only entice landlords into the rental market by making rental property a less risky investment,¹¹⁵ but it would also help facilitate the transition from non-landlord to landlord by helping the landlord through the leasing and eviction processes. The enticement of landlords into the rental market will help alleviate the rental crisis through simple supply and demand.¹¹⁶ Furthermore, the enticement of landlords into the rental market will also help the housing crisis since those landlords will be purchasing houses to be used as rental properties.

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111. Gerchick, *supra* note 47, at 794.

112. Gottesman, *supra* note 54, at 85. "[T]enants get worked up much more often when the landlord appears at the removal. Tenants often want to play out hostilities that were engendered in the eviction process. Excluding landlords from the process reduces the chances of conflict." *Id.* (Footnotes omitted).

113. See Department of Natural Resources, *supra* note 80.

114. See *supra* text accompanying note 86.

115. Gottesman, *supra* note 54, at 66.

116. Gerchick, *supra* note 47, at 801, 804, and 858.