MICHIGAN
LAW REVISION COMMISSION

NINTH ANNUAL REPORT

1974

MICHIGAN LAW REVISION COMMISSION

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Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Harold S. Sawyer

Ex-Officio Members:

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Robert L. Richardson
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Representatives:

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MICHIGAN LAW REVISION COMMISSION
Ninth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its ninth annual report pursuant to Section 14 (e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairmen and ranking minority members of the Committees on Judiciary of the Senate and House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The members of the Commission during 1974 were Senator Robert L. Richardson of Saginaw, Senator Basil W. Brown of Highland Park, Representative Thomas Guastello of Sterling Heights, Representative Fred L. Stackable of Lansing, A. E. Reyhons, Director of the Legislative Service Bureau, as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Harold S. Sawyer, as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.

2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

The problems to which the Commission directs its studies are largely identified by a study of statute and case law of Michigan and legal literature by the Commissioners and Executive Secretary. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, the Commission met with legislative committees to secure disposition of some 17 bills under Committee consideration upon recommendation of the Commission. Ten of these bills were enacted into law during the 1974 legislation. Second, the Commission examined various recent proposals for suggested legislation advanced by the National Conference of Commissioners on Uniform State Laws and the Council of State Governments. Most did not appear appropriate for Commission recommendation, but a few remain under study. Finally, the Commission considered various problems relating to special aspects of current Michigan law. From this group, the Commission selected the following topics for immediate study and report:

(1) Trial of Divorce Actions.

(2) Equalization of Income Rights of Husband and Wife in Entirety Property.

(3) Foreclosure of Mortgage by Summary Proceedings In Lieu of Advertisement.

(4) Technical Amendments to the Business Corporation Act, presented to the Legislature in the course of the current year and enacted into law as Act No. 303 of the Public Acts of 1974.

Recommendations and proposed statutes have been prepared on the above subjects and accompany this report.

In addition to the foregoing, the Commission recommends legislative resubmission and enactment of the following prior recommendations upon which no final action was taken in 1974:

(1) Due Process in Seizure of Debtor's Property -- former H.B. 4470, passed in the 1974 legislative session, initially covered both replevin and garnishment, but was limited in final form to the subject of garnishment. The recommendations relating to replevin remain for consideration. See Recommendations of 1972 Annual Report, p. 7.

(2) Elimination of Appointment of Appraiser's in Probate Court -- former S.B. 429, H.B. 4648, before Senate and House Committees on Judiciary. See Recommendations of 1972 Annual Report, p. 65.

(3) Waiver of Medical Privilege -- former S.B. 326, H.B. 4433, before Senate and House Committees on Judiciary. See Recommendations of 1971 Annual Report, p. 59.

(4) Condemnation Procedures Act -- former S.B. 317, H.B. 4646, before Senate and House Committees on Judiciary. After previous passage by the Senate, this bill was pending before the House Committee in the form of a substitute bill with substantial revisions. The Commission cooperated with various objecting groups in drafting the revised bill. See Recommendations of 1968 Annual Report, p. 11.

(5) Qualification of Fiduciaries Act -- former S.B. 427, before Senate Committee on Judiciary. Formerly passed by House [H.B. 2278, 1969 Legislative session]. See Recommendations of 1966 Annual Report, p. 32.

(6) Uniform Child Custody Jurisdiction Act -- former S.B. 318, H.B. 4592, before Senate and House Committees on Judiciary. A predecessor bill was passed by the House in 1971. See Recommendations of 1969 Annual Report, p. 22.

(7) Insurance Policy in Lieu of Bond Act -- former S.B. 493, H.B. 4634, passed the House on 6/12/73 and sent to Senate Committee on Commerce. See Recommendations of 1972 Annual Report, p. 59.

(8) Amendments to Telephone and Messenger Service Company Act -- former S.B. 1300, before the Senate Committee on Corporations and Economic Development. See Recommendations of 1973 Annual Report, p. 48.

(9) Uniform Disposition of Community Property Rights at Death Act -- not previously introduced. See Recommendations of 1973 Annual Report, p. 50.

(10) Amendment of Hit-Run Statute -- not previously introduced. See Recommendations of 1973 Annual Report, p. 54.

Topics on the current study agenda of the Commission are:

(1) Amendments to Uniform Commercial Code
(2) Uniform Management of Institutional Funds Act
(3) Administrative Hearing Examiners
(4) Amendments to Administrative Procedure Act
(5) Mechanics Lien Laws
(6) Commercial Real Estate Leasing
(7) Criminal Procedure Code References to Justice of the Peace and Other Courts No Longer Existing
(8) Court Costs
(9) Non-Profit Corporation Act
(10) Special Property Assessments
(11) Deferred Payment Judgments in Serious Injury Cases
(12) Battered Child Legislation
(13) Surviving Spouse's Election Against the Will
(14) Intestate Succession Distribution
(15) Class Action Suits
(16) Family Power of Attorney Act
(17) Contemplation of Divorce in Antenuptial Agreements
(18) Debtor Exemption Provisions

The Commission continues to operate with its sole staff member, the part time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48104. The use of consultants has made it possible to expedite

a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low costs. Faculty members of the four law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary of the Commission, continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission submits progress reports to the Legislative Council and members of the Commission have met with the Council and other legislative committees to discuss recommendations and subjects under study by the Commission.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some case amendments thereto by the Legislature:

1967 Legislative Session

Subject	Commission Report	Act No.
Powers of Appointment	1966, p. 11	224
Interstate and International Judicial Procedures	1966, p. 25	178
Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
Stockholder Action Without Meeting	1966, p. 41	201
Original Jurisdiction of Court of Appeals	1966, p. 43	65

1968 Legislative Session

Jury Selection	1967, p. 23	326
Emancipation of Minors	1967, p. 50	293
Guardian ad Litem	1967, p. 53	292
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Corporations as Partners	1966, p. 34	288
Stockholder Approval of Mortgaging Assets	1966, p. 39	287

1969 Legislative Session

Administrative Procedures Act	1967, p. 11	306
Access to Adjoining Property	1968, p. 21	55
Antenuptial Agreements	1968, p. 27	139
Notice of Tax Assessment	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1966, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commissioner Power of Magistrates Act	1969, p. 62	238

1971 Legislative Session

Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

Business Corporation Act	1970, Supp.	284
Summary Proceedings for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

1973 Legislative Session

Technical Amendments to Business Corporation Act	1973, p. 8	98
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96

1974 Legislative Session

Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Model Choice of Forum Act	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Attachment Fees Act	1968, p. 23	306
Amendment of "Dead Man's" Statute	1972, p. 70	305
Contribution Among Joint Tort-feasors Act	1968, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of Debtor's Property	1972, p. 7	371

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Harold S. Sawyer

Ex-Officio Members
Sen. Robert Richardson
Sen. Basil W. Brown
Rep. Thomas Guastello
Rep. Frederick L. Stackable
A. E. Reyhons, Secretary

Date: December 19, 1974

RECOMMENDATION RE TRIAL OF DIVORCE ACTIONS

One of the most distressing problems of judicial administration in recent years has been the delay in the disposition of contested divorce cases, particularly in the populous areas of the state. The need to wait three or more years to gain a divorce in a contested case often results in unfair settlements and grave injustices. Where the marriage relationship has broken down to the point of seeking divorce, there is invariably great emotional trauma for the participants. To live for years in a state of limbo where one is neither married nor divorced is a form of mental anguish which the law should seek to eradicate.

To meet this problem, it is proposed that the issue of the right to divorce be separated from the other issues of the case and be heard at an early date. Towards that end, the proposed bill gives either party the right to request a separation of the divorce issue from the rest of the case. The trial of the issue of the right to a divorce or annulment is given priority over all other civil actions on the trial calendar. Sound principles of public policy warrant priority in disposition of divorce actions over money claims or other property rights generally involved in civil actions. The need to alleviate the emotional and mental suffering of individuals involved in marital difficulties deserves priority of disposition.

The effect of such preference in delaying the trial of other civil actions should be minimal. With the advent of no-fault divorce (PA 1971, No. 75, MCLA 552.6), there is generally no need for lengthy proofs to establish the right to a divorce. Since the only issue under no-fault is the unwillingness of at least one of the parties to continue the marital relationship, there is no warrant for lengthy proofs on this issue. The filing of the divorce action is itself a convincing indication that the marital relationship has in fact broken down. Furthermore, the elimination of proof of marital misconduct in relation to the issue of granting the divorce as hereinafter discussed, should serve to further assure limited trial time.

A decision of the court granting or denying a divorce is made a final judgment. The parties to the marital dispute are thus relieved of their emotional trauma at the earliest feasible time and are granted the freedom to pursue their individual needs in planning a new life. The final resolution of the divorce suit by disposition

of the issues of alimony, property settlement and custody of children can follow at a later date. Delay in the trial of these issues generally adduces no great emotional strain since a temporarily workable solution has been arrived at in the course of hearings on temporary alimony and temporary custody.

Another divorce problem inadequately resolved to date is that the adoption of the no-fault divorce statute has not brought uniformity in judicial rulings as to the admissibility of proofs of marital misconduct. See Kretzschmar v. Kretzschmar, 48 Mich.App. 279 (1973). It was not intended that the issue of marital misconduct should continue to be the basis for granting or denial of divorce. The right to a divorce is grounded only upon proof of an irretrievable termination of the marital relationship. There is no need or justification for cluttering the time of the courts and upsetting the emotional tranquility of the parties and their families by public airings of marital misconduct. The right to a divorce is not dependent on whether one or the other of the parties has misbehaved. It is enough that at least one of the parties chooses not to continue the marriage relationship. The accompanying Bill proposes to clarify the intent that no proof of marital misconduct be admissible on the issue of the granting of a divorce.

Even as to child custody, alimony, or property settlement issues, no valid purpose is served by the introduction of proofs of marital misconduct unless such proofs are clearly required for a fair adjudication of those issues. If the marital misconduct is of such nature as to clearly indicate an unfitness for custody, such proofs should be admissible. Likewise, if the marital misconduct has had a materially adverse effect on the family fortunes available for distribution between the parties, proof of such conduct should be permissible in the course of adjudication as to a fair property settlement. Unless clearly serving either of those purposes, proof of marital misconduct should have no place for airing in the public forum of a trial. By the terms of the proposed Bill, proof of marital misconduct is limited to achieve these ends.

In order to avoid the indiscriminate use of proof of marital misconduct as a means of pressure to achieve unfair settlements, it is recommended that no discovery proceedings be available with respect to proofs relating to marital misconduct.

The proposed bill follows.

TRIAL OF DIVORCE ACTIONS

AN ACT to amend Chapter 84 of the Revised Statutes of 1846, entitled "Of Divorce", as amended, being sections 552.1-552.46 of the Compiled Laws of 1970, by adding section 9(g).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

Section 1. Chapter 84 of the Revised Statutes of 1946, entitled "Of Divorce", being sections 552.1-552.46 of the Compiled Laws of 1970, is amended by adding section 9(g) to read as follows:

Section 9(g). (1) Upon motion of either party, the Court shall order a separate trial as to the issue of the granting or denial of an annulment or divorce from the bonds of matrimony. All other issues in the cause, including custody, alimony or property settlement, shall thereafter be heard as a separate trial.

(2) Upon such separation of issues, the trial of the issue as to granting or denial of the annulment or divorce shall be brought on for hearing on a separate trial calendar having priority over all other civil actions.

(3) On the trial of such issue, judgment granting or denying annulment or divorce shall be entered which shall be deemed a final judgment appealable as a matter of right. Upon the trial of all other issues in the cause, the judgment thereon shall also constitute a final judgment appealable as a matter of right, but such appeal shall not include the issue as to the granting or denial of the annulment or divorce.

(4) Proof of marital misconduct shall not be permissible on the issue of granting or denial of a divorce. Such proof may be introduced on the issues of child custody, alimony, or property settlement where clearly relevant and material for adjudication of such issues. No discovery proceedings shall be available with respect to proofs relating to marital misconduct.

RECOMMENDATION RELATING TO EQUALIZATION OF INCOME RIGHTS OF HUSBAND AND WIFE IN ENTIRETY PROPERTY

Under Michigan law, ownership of property as tenants by entirety vests all rights to income from the property solely in the husband. The wife has no legal right to such income unless and until her husband has predeceased her.

In most states, it was thought that the tenancy by the entirety was based in part upon the ancient common-law concept of unity of person in the case of husband and wife and therefore was either abolished or significantly altered by the married women's acts.[1] See Bienenfeld, Creditors v. Tenancy by the Entirety, 1 Wayne L.Rev. 195, 106-107 (1955). Of those states that retained tenancy by the entirety, a substantial majority departed from the common law rule giving the husband exclusive control of and the sole right to the income and profits from the entirety and instead granted to the wife equal rights with the husband to possession and profits. See Bienenfeld, supra at 107; Annotation, 141 ALR 179, 203-204 (cases collected in footnotes).

A few states continue to follow the common law rule granting the husband exclusive control of and the sole right to the income and profits from the entirety, but they also permit the creditor of the husband to reach the property subject only to the wife's survivorship rights. See Raptes v. Cheros, 155 N.E. 787 (1927); 4A Powell, Real Property, §623. However, Michigan and one or two other states hold that the husband alone is entitled to the use of and the income and profits from the entirety estate, but that his interest is not subject to levy by his separate creditors.[2]

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1 More than half of the states no longer recognize tenancy by the entirety.

2 In Bienenfeld, supra at 10, Michigan and North Carolina are described as the only states taking this position. Tennessee may also fall in this category. See In re Guardianship of Plowman, 217 Tenn. 494, 398 S.W.2d 721 (1966).

In Morrill v. Morrill, 138 Mich. 112 (1904), the Michigan Supreme Court held that, notwithstanding the passage of the Married Women's Act, the husband continued to enjoy the right to use, and the income from, all of the property held by the entirety. The position taken in Morrill has been reaffirmed in subsequent decisions. See In re Thomas Estate, 341 Mich. 158 (1954); Dombrowski v. Gorecki, 291 Mich. 678 (1939). At the same time, the Michigan Supreme Court has held that, while the husband is entitled to the rents and profits of the entirety land, the rent due on such property is not a garnishable asset of the husband. People's State Bank v. Reckling, 252 Mich. 383 (1930). Consider also Way v. Root, 174 Mich. 418 (1913), noting, in dictum, that recognition of the husband's right to the income from tenancy by the entirety was not inconsistent with the principle that creditors of the husband could not levy on such income. As Professor Kahn has noted,[3] these decisions, with one possible exception (Dombrowski), dealt with real property, but the same rule presumably would apply to personalty under decisions recognizing tenancy by the entirety in such property. See DeYoung v. Mesler, 373 Mich. 499 (1964); MCL §557.151; Bienenfeld, supra at 108.

The logic of the position adopted in the Morrill decision can be challenged on several gounds. First, as noted in Honigman, Tenancy by Entirety in Michigan 5 Mich. St. Bar J. 264 (1926):

> "[T]o adopt the common law rule of the [Morrill] decision is to disregard the entire mass of entirety law as developed in this state. At the common law, the husband could by virtue of his right to the rents and profits convey a life interest in the entirety and his creditors could upon attachment gain a similar interest. That such is not the law of Michigan, the decisions most emphatically establish. That doctrine of inserverability as developed in this state is not merely that the wife has no separate interest in the property, but that neither spouse has any separate interest."

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3 Kahn, Joint Tenancies and Tenancies by the Entirety in Michigan--Federal Gift Tax Consideration, 66 Mich.L.Rev. 431, 446 (1968).

See also Commissioner v. Hart, 76 F.2d 864 (6th Cir. 1935), making similar argument. The Morrill ruling may indeed be viewed as inconsistent with the philosophy underlying the treatment of the rights of women under Michigan law. The decisions of other jurisdictions may well be correct in concluding, contrary to Morrill, that the basic premise of the Married Women's Act altered the nature of the tenancy by the entirety. Under that Act, the grant of equality of rights to a married woman is inconsistent with the concept of total control by the husband of jointly owned properties. Furthermore, as Professor Kahn notes:

> "The question of the husband's right to all the income has been further clouded by the Michigan Constitution of 1963. Section 1 of article X of the 1963 Constitution is very similar to section 5 of article XVI of the 1850 Constitution and section 8 of article XVI of the 1908 Constitution, except for two sentences that were added in the 1963 provision. One, which is relevant to the issue at hand, reads: 'The disabilities of coverture as to property are abolished'. The impact (if any) of this constitutional provision on the husband's right to all of the income depends upon whether his right is a product of the common-law view of marital unity, or whether it is merely an attribute of a tenancy by entirety." Kahn, supra at 447.

Professor Kahn concludes that the Michigan decisions probably take the latter view of the source of the husband's right, see Way v. Root, supra, but the dexisions are not that clear. See, e.g., Morrill v. Morrill, supra at p. 114.

Aside from the arguments noted above, the Morrill view has a pernicious impact upon tax planning. The Sixth Circuit held in Commissioner v. Hart, 76 F.2d 864 (6th Cir. 1935), that income from property held by the entirety is shared equally by the two spouses and therefore that each is taxable on one-half of the income. This decision clearly misinterpreted Michigan law. Nevertheless, the Tax Court has accepted it as a correct statement of Michigan law and the Internal Revenue Service continues to follow it. As Professor Kahn notes:

> "The position of the Internal Revenue Service presents something of a dilemma to a taxpayer, since if he plans his affairs on the assumption that the gift tax valuation of an interest in a Michigan tenancy by the entirety must take into account the husband's right to all the income, he is subject to the risk of the Service, relying on Hart, will value the interest differently; and on the other hand, there is no assurance that the Service will perpetrate the error of Hart indefinitely." Kahn, supra at p. 447.

Professor Kahn goes on to suggest a legislative remedy:

> "There can be no policy justification for disabling a wife from sharing in the income from property held by the entirety, but it appears that the present law in Michigan does so. Hopefully, the state legislature will soon change this anachronistic rule. Legislative action is particularly appropriate here since the 1963 Constitution has raised doubts as to the continuing vitality of the rule, and the Sixth Circuit decision in Hart has caused considerable confusion as to the gift tax valuation of interest in such estates." Kahn, supra at p. 449.

A husband's right to all income from property held by the entirety may also present an additional tax difficulty -- whether a gift to a wife of an interest in property as a tenant by the entirety constitutes a gift of a future interest and therefore does not qualify for the $3,000 annual gift tax exclusion. In a recent ruling from Tennessee, where the husband also retains a right to all of the income, the Service held that that gift did not qualify. Rev. Rul. 74-345 (IRS Bull., July 15, 1974).

Legislative reversal of the Morrill view should not be retroactive. See Kahn, supra at p. 449, fn. 94:

> "The legislature clearly is empowered to change the rule for property acquired by entirety after enactment of such a legislative change. However, in view of the

> Michigan Supreme Court's determination that the husband's right to all the income is a property right, there is a serious constitutional question as to whether the legislature could deprive the husband of his right to all the income from property acquired by the entirety prior to adoption of a legislative change. See Ford & Son v. Little Falls Co., 280 U.S. 369 (1930); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Muhlker v. New York & HRR, 197 U.S. 544 (1905)."

A termination of the husband's right to all income in an existing tenancy by entirety might constitute a taking of his property right without compensation in contravention of the Fourteenth Amendment. The proposed bill is thus made applicable only to tenancy by entireties created after the date that the statute is made effective.

The proposed bill follows:

EQUALIZATION IF INCOME RIGHTS OF HUSBAND AND WIFE IN ENTIRETY PROPERTY

AN ACT to equalize income rights of husband and wife in real estate and other property, held as tenants by the entirety.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. A husband and wife shall be equally entitled to the rents, products, income, or profits, and to

the control and management, of real or personal property held by them as tenants by the entirety. This act shall apply only to tenancies by entirety created after the effective date of this act.

PROPOSAL FOR FORECLOSURE OF A MORTGAGE BY SUMMARY PROCEEDINGS IN LIEU OF ADVERTISEMENT

As a result of recent decisions of the United States Supreme Court a question has arisen as to the constitutionality of foreclosure of real estate mortgages by advertisement as provided under Mich.Comp.L. 1970 Secs. 600.3201 to 600.3280. See Snidiach v. Family Financial Corp, 395 U.S. 337 (1969) and Fuentes v. Shevin, 407 U.S. 67 (1972). Under these cases, the United States Supreme Court questions the constitutionality of actions whereby a person is deprived of property rights without a prior court hearing in which he has an opportunity to be heard.

In the past year at least 2 decisions have been rendered by the U.S. District Courts in Michigan questioning the constitutional validity of foreclosure by advertisement. See Northrup v. Federal National Mortgage Assn., ___ F.Supp. ___ (E.D. Mich. 1974) (Case #40074) and Garner v. Tri-State Development Co., ___ F.Supp. ___ (E.D. Mich. 1974) (Case #4-71428).

At this time it has not yet been determined by the Michigan Supreme Court or any other appellate court whether foreclosure of mortgages by advertisement is legally valid in the face of these constitutional objections. The question of the validity of foreclosures by advertisement creates a serious problem of the validity of real estate titles which result from foreclosure sale. Most title companies are withholding insurance of titles to property so derived.

While the law in this field has not yet been firmly resolved by court decisions, the validity of the public policy under which foreclosure by advertisement is sanctioned must also be questioned. When a person is to be deprived of his property by reason of foreclosure of a mortgage, it would seem that the basic tenets of due process should require reasonable notice to him with an opportunity to be heard in a court hearing as to any defenses he may claim.

Under present law a mortgage on real estate can be foreclosed either by advertisement (C.L. 70, Sec. 600.3201-3280), or by circuit court proceeding in chancery (C.L. 70, Sec.

600.3101-3180). In the latter event, the mortgagor receives a hearing in circuit court before foreclosure sale can be held. In such suit, judgment can be taken against the mortgagor for a deficiency if the proceeds of the sale do not pay off the full amount due under the mortgage. In the foreclosure by advertisement, the mortgagor is afforded no such opportunity to be heard in a court proceeding. Proceedings for foreclosure by advertisement shorten the time period for effectuation of the mortgage foreclosure and are less expensive than the circuit court actions. After foreclosure by advertisement, the mortgagor still has the right to bring court action to collect any deficiency from the mortgagor if the sale proceeds have not been sufficient to pay the mortgage debt in full.

In this state debts secured by real estate are typically in two forms. There is the mortgage instrument executed by the borrower as mortgagor giving security for his loan from the lender, the mortgagee. Then there is the land contract wherein the seller of the property on an installment payment basis if the vendor and the purchaser of the property who owes the unpaid balance is the vendee. Under the land contract, the title to the property remains in the vendor. The vendee is, however, deemed the equitable owner while the vendor's interest is generally equated with that of a mortgagee. Thus proceedings to foreclose an executory contract may be brought in the circuit court, with the right to a deficiency judgment similar to that of a mortgage foreclosure. See C.L. 1970, Sec. 3101-3180 and 1963 GCR 745 which provide substantially the same procedure for foreclosure in the circuit court of a land contract or mortgage.

In the case of a land contract, however, there is presently afforded a summary proceeding in the district court for foreclosure of the land contract which is more expeditious in effectuating the foreclosure and is much less expensive by way of legal costs. In such proceedings, however, the right to deficiency judgment against the vendee is waived.

For the mortgagee who seeks merely to exercise his legal right to foreclose his mortgage for nonpayment of sums due under the mortgage, there would seem no sound policy objections

to substantially preserving the shorter time period presently available by foreclosure by advertisement provided that the mortgagee is willing to waive any claim to a deficiency judgment against the mortgagor. It is our view that sound policy would dictate that foreclosure by advertisement should be eliminated but that there should be substituted therefor a foreclosure action by summary proceedings in the district courts similar to that available for foreclosure of land contracts. With this end in view, the proposed bill follows:

PROPOSED BILL

AN ACT to amend Act No. 236 of the Public Acts of 1961, entitled "An act to revise anc consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions, the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act, and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1970, by amending sections 5726, 5728, 5730, 5739, 5741, 5744 and 5750 thereof, and by repealing sections 3201 to 3280.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 5726, 5728, 5730, 5739, 5741, 5744 and 5750 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.5726, 600.5728, 600.5730, 600.5739, 600.5741, 600.5744 and 600.5750 of the Compiled Laws of 1970, are amended to read as follows:

Section 5726 (1) A person entitled to any premises may recover possession thereof by a proceeding under this chapter after forfeiture of an executory contract for the purchase of the premises but only if the terms of the contract expressly provide for termination or forfeiture, or give the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract. For purposes of this chapter, moneys required to be paid under the contract shall not include any accelerated indebtedness by reason of breach of the contract.

(2) A PERSON WHO IS A MORTGAGEE, OR HIS ASSIGNEE, WHO HOLDS A LIEN AGAINST PREMISES UNDER A MORTGAGE INSTRUMENT WHICH PROVIDES FOR SALE OF THE PREMISES IN THE EVENT OF DEFAULT THEREUNDER, MAY RECOVER POSSESSION THEREOF AND TITLE THERETO BY A PROCEEDING UNDER THIS CHAPTER AFTER GIVING

NOTICE OF FORECLOSURE AS HEREIN PROVIDED. FOR PURPOSES OF THIS CHAPTER, MONEYS REQUIRED TO BE PAID UNDER THE COVENANTS OF A MORTGAGE SHALL NOT INCLUDE ANY ACCELERATED INDEBTEDNESS BY REASON OF THE BREACH THEREOF.

Sec. 5728. (1) Possession may be recovered under section 5726 only after the vendee OR MORTGAGOR or person holding possession under him has been served with a written notice of forfeiture IN THE CASE OF AN EXECUTORY PURCHASE CONTRACT OR WRITTEN NOTICE OF FORECLOSURE IN THE CASE OF A MORTGAGE and has failed in the required time to pay moneys required to be paid under the contract OR MORTGAGE or to cure any other material breach of the contract OR MORTGAGE. Unless the parties have agreed in writing to a longer time, the person served with a notice of forfeiture OR FORECLOSURE shall have 15 days thereafter before he is required to pay moneys required to be paid under the contract OR MORTGAGE and cure other material breaches of the contract OR MORTGAGE or to deliver possession of the premises.

(2) The notice of forfeiture OR FORECLOSURE shall state the names of the parties to the contract OR MORTGAGE and the date of its execution, give the address or legal description of the premises, specify the unpaid amount of moneys required

to be paid under the contract OR MORTGAGE and the dates on which payments thereof wer due, specify any other material breaches of the contract OR MORTGAGE and shall declare forfeiture of the contract OR FORECLOSURE OF THE MORTGAGE effective in 15 days, or specified longer time, after service of the notice, unless the money required to be paid under the contract OR MORTGAGE is paid and any other material breaches of the contract OR MORTGAGE are cured within that time. The notice shall be dated and signed by the person entitled to possession, his attorney or agent.

Sec. 5730 The notice of forfeiture OR FORECLOSURE provided for in section 5728 may be served by delivering it personally to the vendee OR MORTGAGOR or person holding possession under him or by delivering it on the premises 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 vendee OR MORTGAGOR or person holding possession under him. If the notice is mailed, the date of service for purposes of this chapter is the next regular day for delivery of mail after the day when it was mailed. If notice cannot be served by 1 of these methods, it may be

served by publication under the provisions of Act No. 235 of the Public Acts of 1929, being sections 554.301 and 554.302 of the Compiled Laws of 1948 and the date of the third publication is the date of service.

Sec. 5739 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 OR MORTGAGE under which the premises were held or for waste or malicious destruction to the premises, but 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 which otherwise limits the jurisdiction of the court.

Sec. 5741 If the jury or the judge finds that the plaintiff is entitled to possession of the premises, or any part thereof, judgment may be entered in accordance with the finding and may be enforced by a writ of restitution as provided in this chapter. If it is found that the plaintiff is entitled to possession of the premises, in consequence of the nonpayment of any money due under a tenancy, or the nonpayment of moneys required to be paid under an executory contract for purchase of the premises OR UNDER A MORTGAGE, the jury or judge making the finding shall

determine the amount due or in arrears at the time of trial which amount shall be stated in the judgment for possession. In determining the amount due under a tenancy the jury or judge shall deduct any portion of the rent which the jury or judge finds to be excused by the plaintiff's breach of the lease or by his breach of 1 or more statutory covenants imposed by section 39 of chapter 66 of the Revised Statutes of 1846, as added, being section 554.139 of the Compiled Laws of 1970. The statement in the judgment for possession shall be only for the purpose of prescribing the amount which, together with taxed costs, shall be paid to preclude issuance of the writ of restitution. The judgment may include an award of costs, enforceable in the same manner as other civil judgments for money in the same court.

Sec. 5744 (1) Subject to the time restrictions of this section, the court entering a judgment for possession shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to cause the plaintiff to be restored and put in full possession of the premises.

(2) On conditions determined by the court, the writ of restitution may be issued forthwith upon the entry of judg-

ment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court:

(a) The premises are subject to inspection and certificate of compliance under Act No. 167 of the Public Acts of 1917, as amended, being sections 125.401 to 125.543 of the Compiled Laws of 1970 and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

(b) Forcible entry was made contrary to law.

(c) Entry was made peaceably but possession is unlawfully held by force.

(d) The defendant came into possession by trespass without color of title or other possessory interest.

(e) The tenant, wilfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

(3) (a) When the judgment for possession is based upon the forfeiture of an executory contract for the purchase of the premises, the writ of restitution shall not be issued until the expiration of 90 days after the entry of judgment

for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

(b) WHEN THE JUDGMENT FOR POSSESSION IS BASED UPON FORECLOSURE OF A MORTGAGE BY REASON OF THE DEFAULT IN THE COVENANTS THEREOF, THE WRIT OF RESTITUTION SHALL NOT BE ISSUED UNTIL EXPIRATION OF 6 MONTHS AFTER THE ENTRY OF JUDGMENT FOR POSSESSION.

(4) In all other cases, the writ of restitution shall not be issued until the expiration of 10 days after the entry of the judgment for possession.

(5) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which the writ of restitution shall not be issued and if a bond to stay proceedings is filed, the period during which the writ shall not be issued shall be tolled until the disposition of the appeal or motion for new trial is final.

(6) When the judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of moneys required to be paid under or any other material breach of an executory contract for purchase of the premises, OR OF A MORTGAGE ON THE PREMISES, the writ of restitution shall not

issue if, within the time provided, the amount as stated in the judgment, together with the taxed costs, is paid to the plaintiff and other material breaches of an executory contract for purchase of the premises OR OF A MORTGAGE ON THE PREMISES are cured.

(7) (a) Issuance of the writ of restitution, based on a judgment for possession in consequence of the forfeiture of an executory contract for the purchase of the premises, shall foreclose any equitable right of redemption which the purchaser might have or claim in the premises.

(b) ISSUANCE OF THE WRIT OF RESTITUTION BASED ON A JUDGMENT FOR POSSESSION IN CONSEQUENCE OF THE FORECLOSURE OF A MORTGAGE SHALL VEST OWNERSHIP OF AND TITLE TO THE PREMISES IN THE PLAINTIFF AND SHALL FORECLOSE ANY LEGAL OR EQUITABLE RIGHT OF REDEMPTION WHICH THE DEFENDANT MAY HAVE OR CLAIM IN THE PREMISES.

Sec. 5750 The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge or bar any other claim for relief, except that a judgment for possession after forfeiture of an executory contract for the purchase of premises OR UPON FORECLOSURE OF A MORTGAGE ON THE PREMISES shall merge and bar

any claim for money payments due or in arrears under the contract OR MORTGAGE at the time of trial and that a judgment for possession after forfeiture of such an executory contract OR FORECLOSURE OF A MORTGAGE which results in the issuance of a writ of restitution shall also bar any claim for money payments which would have become due under the contract OR MORTGAGE subsequent to the time of issuance of the writ. The plaintiff obtaining a judgment for possession of any premises under this chapter is entitled to a civil action against the defendant for damages from the time of forcible entry or detainer, or trespass, or of the notice of forfeiture, notice to quit or demand for possession, as the case may be; PROVIDED, HOWEVER, THAT UPON FORECLOSURE OF A MORTGAGE HEREUNDER, THE PLAINTIFF SHALL BE ENTITLED TO A CIVIL ACTION AGAINST THE DEFENDANT ONLY FOR DAMAGE CAUSED BY MALICIOUS DESTRUCTION OF THE PREMISES.

Section 2. Sections 3201 to 3280 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.3201 to 600.3280 of the Compiled Laws of 1970, are repealed.

1974 RECOMMENDATIONS RELATING TO TECHNICAL AMENDMENTS TO THE BUSINESS CORPORATION ACT

Explanations of the proposed amendments are as follows:

Section 131 is amended to permit retention of records by the Administrator in microfilm or other reproduced form. It is expected that such storage methods would result in considerable savings.

Section 131 is amended to provide for filing of corrected documents. The new language is based on NYBCL §105, which has afforded the New York administrator a useful means for allowing correction of apparent errors in corporate filings. The $10.00 filing fee for such corrections is added to Sec. 1060 by amendment.

Section 212. The amendment to Section 212 would permit a foreign corporation to obtain a certificate of authority to transact business in Michigan by adding a word or words to its name which would sufficiently distinguish the name from any other name on record.

The following states specifically permit qualification under an assumed name in case of conflict of name:

California	Missouri	Tennessee
Colorado	New Jersey	Texas
Connecticut	New Mexico	Utah
Florida	North Carolina	Virginia
Georgia	Oregon	Washington
Iowa	Pennsylvania	Wisconsin
Mississippi	Rhode Island	

The suggested amendment to Section 212 as set forth in the proposed Bill is similar to the Georgia Code.

Section 415 is amended to allow quorum provisions to be included in bylaws adopted by the shareholders, as in old MCLA Sec. 450.38. A number of existing Michigan corporations, particularly nonprofits, included such provisions in their bylaws, and the new Business Corporation Law rendered such provisions inoperative. The resulting costs and inconvenience are great, particularly for nonprofit corporations. There appears no reason why such bylaws should not remain in effect, as provided in the Amendment.

Section 602 is amended by adding a provision specifically allowing change of the registered office or resident agent by amendment to the articles of incorporation.

Section 735 is deleted. In view of the provision appearing in Section 1021 (2) requiring a foreign corporation to file a certified copy of the certificate of merger within sixty days after the effective date, Section 735 seems superfluous. The present statute requires both the filing of a certificate under Section 735 and the filing of a certified copy as required in Section 1021.

Section 1041 is amended to delete the reference to Section 735 in part g.

Section 1042 is amended to provide that the notice shall be sent by first class mail, instead of registered or certified mail. The cost to the State in 1973 for notification by certified mail totaled $1479.00 whereas the cost would have been $226.00 by first class mail.

The cost to the State in 1974 for notification by certified mail of the delinquency in filing the supplemental statement and the annual reports, to date, has totaled $1855.00. The cost by first class mail would have been $280.00.

Since delinquency notices to Michigan corporations are not required to be sent by registered or certified mail, it would not seem necessary to require that the notifications to foreign corporations be sent by registered or certified mail.

Section 1060 is amended to delete the reference to the filing fee of the certificate filed pursuant to Section 735 (part o) and, in place thereof, provide for the $10.00 filing fee for filing the Certificate of Correction.

Section 1063. In order to determine the franchise fee payable upon increase in authorized capital stock involving no par value stock, the Corporation and Securities Bureau must be advised of the stated value per share. Present Section 1063 does not specifically require a corporation to report the stated value at the time of filing an amendment increasing the no par value stock. Several attorneys and corporations have challenged the Bureau's right to request this information in the absence of statutory requirements. The amendment to Section 1063 would require the corporation to inform the Administrator as to the stated value per share in the same manner as is required of corporations at the time of incorporation.

The amendment deletes the provision in Section 1063 requiring a foreign corporation to inform the administrator of the stated value inasmuch as $50,000.00 is deemed to be initially attributable to Michigan at the time of qualification in Michigan regardless of the total dollar amount of the authorized capital. Hence, the stated value is not required to be reported at the time of admittance. Stated value is required, however, at the time of filing the supplemental statement, and amendment to Section 1063 requires a foreign corporation to inform the administrator of the stated value at the time of filing the supplemental statement.

Stated value applied to the total number of authorized no par value shares has resulted, in a few instances, in apparent inequities, where the stated capital per share is very high. Accordingly, to avoid inequity a new subsection (2) is added reinstating the $100.00 per share limit of old MCLA §450.303a.

The amendments are as follows. Added language is capitalized; deleted language is lined through. Except where otherwise noted, the original section is unchanged.

Sec. 131. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. If the document substantially conforms to the requirements of this act, the administrator shall indorse upon it the word "filed" with his official title and the dates of receipt and of filing thereof, and shall file and index ~~it~~ THE DOCUMENT OR A MICROFILM OR OTHER REPRODUCED COPY THEREOF in his office. If so requested at the time of the delivery of the document to his

office, the administrator shall include the hour of filing in his indorsement thereon. The administrator shall prepare and return a true copy of the document OTHER THAN AN ANNUAL REPORT, OR AT HIS DISCRETION THE ORIGINAL THEREOF, to the person who submitted it for filing showing the filing date thereof. The records and files of the administrator relating to corporations shall be open to reasonable inspection by the public. THE RECORDS OR FILES MAY, AT THE DISCRETION OF THE ADMINISTRATOR, BE MAINTAINED EITHER IN THEIR ORIGINAL FORM OR IN MICROFILM OR OTHER REPRODUCED FORM. THE ADMINISTRATOR MAY MAKE COPIES OF ALL DOCUMENTS FILED UNDER THIS ACT, OR ANY PREDECESSOR ACT, BY MICROFILM OR OTHER PROCESS AND MAY DESTROY THE ORIGINALS OF THE DOCUMENTS SO COPIED.

(2) The document is effective at the time it is indorsed unless a subsequent effective time is set forth in the document which shall not be later than 90 days after the date of delivery.

Sec. 133. A DOCUMENT RELATING TO A DOMESTIC OR FOREIGN CORPORATION FILED BY THE ADMINISTRATOR UNDER THIS ACT MAY BE CORRECTED WITH RESPECT TO AN INFORMALITY OR ERROR APPARENT ON THE FACE OR DEFECT IN THE EXECUTION THEREOF INCLUDING THE DELETION OF ANY MATTER NOT PERMITTED TO BE STATED THEREIN. A CERTIFICATE, ENTITLED "CERTIFICATE OF CORRECTION OF .....

(CORRECT TITLE OF DOCUMENT AND NAME OF CORPORATION)" SHALL BE SIGNED AS PROVIDED IN THIS ACT WITH RESPECT TO THE DOCUMENT BEING CORRECTED AND FILED WITH THE ADMINISTRATOR. IT SHALL SET FORTH THE NAME OF THE CORPORATION, THE DATE THE DOCUMENT TO BE CORRECTED WAS FILED BY THE ADMINISTRATOR, THE PROVISION IN THE DOCUMENT AS CORRECTED OR ELIMINATED, AND IF THE EXECUTION WAS DEFECTIVE, THE PROPER EXECUTION. THE FILING OF THE CERTIFICATE OF CORRECTION BY THE ADMINISTRATOR SHALL NOT ALTER THE EFFECTIVE TIME OF THE DOCUMENT BEING CORRECTED, WHICH SHALL REMAIN AS ITS ORIGINAL EFFECTIVE TIME, AND SHALL NOT AFFECT ANY RIGHT OR LIABILITY ACCRUED OR INCURRED BEFORE SUCH FILING. A CORPORATE NAME MAY NOT BE CHANGED OR CORRECTED UNDER THIS SECTION.

Sec. 212. (1) The corporate name of a corporation formed or existing under or subject to this act:

(a) Shall not contain a word or phrase, or abbreviation or derivative thereof, which indicates or implies that the corporation is organized for a purpose other than 1 or more of the purposes permitted by its articles of incorporation.

(b) Shall not be the same as, or confusingly similar to, the corporate name of a domestic corporation, or of a foreign corporation authorized to transact business in this state, or a corporate name currently reserved under this act or

a predecessor act, or a named assumed under section 217, unless the written consent, of the other domestic or foreign corporation or holder of a reserved name, to the adoption of a confusingly similar name, but not the same name, is filed in the office of the administrator or, in lieu of the consent, there is filed a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(c) Shall not contain a word or phrase, or an abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this state, unless such restriction has been complied with.

(2) WHENEVER A FOREIGN CORPORATION IS UNABLE TO OBTAIN A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BECAUSE ITS CORPORATE NAME DOES NOT COMPLY WITH THE PROVISIONS OF SUBSECTION (1), IT MAY APPLY FOR AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BY ADDING TO ITS CORPORATE NAME IN SUCH APPLICATION A WORD, ABBREVIATION, OR OTHER DISTINCTIVE AND DISTINGUISHING ELEMENT, OR ALTERNATIVELY, ADOPTING FOR USE IN THIS STATE AN ASSUMED NAME OTHERWISE AVAILABLE FOR USE. IF IN THE JUDGMENT OF THE ADMINISTRATOR SUCH NAME WOULD COMPLY WITH THE PROVISIONS OF SUBSECTION (1),

THE SUBSECTION SHALL NOT BE A BAR TO THE ISSUANCE TO SUCH CORPORATION OF A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE. THE CERTIFICATE ISSUED TO THE FOREIGN CORPORATION SHALL BE ISSUED IN SUCH NAME AND THE CORPORATION SHALL USE SUCH NAME IN ALL ITS DEALINGS WITH THE ADMINISTRATOR AND IN THE CONDUCT OF ITS AFFAIRS IN THIS STATE.

Sec. 217. A domestic or foreign corporation may transact its business under any assumed name or names other than its corporate name if not precluded from use by section 212 AND THE SAME NAME MAY BE ASSUMED BY 2 OR MORE CORPORATIONS IN THE CASE OF CORPORATIONS PARTICIPATING TOGETHER IN ANY PARTNERSHIP OR JOINT VENTURE by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted. Such certificate shall be effective, unless sooner terminated by the filing of a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. It may be extended for additional consecutive periods of 5 full calendar years each by the filing of similar certificates not earlier than 90 days preceding the expiration of any such period. The administrator shall notify the corporation of the

impending expiration of the certificate of assumed name no later than 90 days before the initial or subsequent 5-year period will expire. This section does not create substantive rights to the use of a particular assumed name.

Sec. 415. (1) Unless a greater or lesser quorum is provided in the articles of incorporation, IN A BYLAW ADOPTED BY THE SHAREHOLDERS or IN this act, shares entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. The shareholders present in person or by proxy at such meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Whether or not a quorum is present, the meeting may be adjourned by a vote of the shares present.

(2) When the holders of a class or series of shares, are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of such class or series for transaction of the item of business.

Sec. 602. [Add new subsection "Q" as follows]

(Q) TO CHANGE ITS REGISTERED OFFICE OR CHANGE ITS RESIDENT AGENT.

[Renumber remaining paragraph].

Sec. 735 [Deleted].

Sec. 921. [Add subsection (2)]. (2) THE PENALTIES PRESCRIBED IN THIS SECTION SHALL NOT APPLY:

(A) TO A CORPORATION THAT MAKES TIMELY FILING OF ITS ANNUAL REPORT ACCOMPANIED BY PAYMENT OF THE FEE CLAIMED THEREIN TO BE PAYABLE: OR

(B) DURING ANY EXTENSION GRANTED PURSUANT TO SECTION 923, BUT THE CORPORATION SHALL BE LIABLE FOR INTEREST OF 3/4% PER MONTH ON ANY UNPAID AMOUNTS FROM THE STATUTORY DUE DATE TO THE DATE OF PAYMENT THEREOF.

Sec. 1041. In addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to transact business in this state upon the conditions prescribed in section 1042 upon any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required by this act.

(b) The corporation, after change of its registered office or resident agent, fails to file a statement of such change as required by this act.

(c) The corporation, after amending its articles of incorporation, fails to file a copy of the amendment as required by this act.

(d) THE CORPORATION, AFTER BECOMING A PARTY TO A MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION, FAILS TO FILE A COPY OF THE CERTIFICATE OF MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION AS REQUIRED BY THIS ACT.

(e) The corporation fails to file a supplemental statement as required by this act.

(f) The corporation fails to file its annual report within the time required by this act, or fails to pay an annual privilege fee required by law.

~~(g)--The-corporation-fails-to-comply-with-sec.-735.~~

Sec. 1042. (1) The administrator shall revoke a certificate of authority of a foreign corporation only when he has given the corporation not less than 90 days' notice that a default under section 922 exists and that its certificate of authority will be revoked unless the default is cured within 90 days after mailing of the notice, and the corporation fails before revocation to cure the default.

(2) The notice shall be sent by ~~registered-or-certified~~ FIRST CLASS mail to the corporation at its registered office in this state and at its main business or headquarters office as these offices are on record in the office of the administrator.

(3) Upon revoking such a certificate of authority, the administrator shall issue a certificate of revocation and mail a copy to the corporation at each of the addresses designated in subsection (2).

(4) The issuance of the certificate of revocation has the same force and effect as issuance of a certificate of withdrawal under section 1031.

Sec. 1060. (1) The fees to be paid to the administrator by or in behalf of corporations, for the purposes herein specified, shall be as follows:

(a) Examining, filing, and copying articles of domestic corporation, $10.00.

(b) Examining and filing articles or certificates of incorporation, and other papers connected with the application of a foreign corporation for admission to do business in Michigan, $10.00.

(c) Examining, filing, and copying any amendments to the articles of a domestic corporation, $10.00.

(d) Examining and filing any amendments to the articles of a foreign corporation, $10.00.

(e) Examining and filing any supplemental statement, $10.00.

(f) Examining, filing, and copying any certificate of merger or consolidation AS PROVIDED IN CHAPTER 7, $50.00.

(g) EXAMINING AND FILING ANY CERTIFICATE OF MERGER OR CONSOLIDATION OF A FOREIGN CORPORATION, AS PROVIDED IN SECTION 1021, $10.00.

(h) Examining, filing, and copying any certificate of dissolution, $10.00.

(i) Examining and filing application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, $10.00.

(j) Examining, filing, and copying application for reservation of corporate name, $10.00.

(k) Examining, filing, and copying certificate of assumed name or certificate of termination of assumed name, $10.00.

(l) Examining, filing, and copying statement of change of registered office or resident agent, $5.00.

(m) Examining, filing, and copying restated articles of domestic corporations, $10.00.

(n) Examining, filing, and copying any certificate of abandonment, $10.00.

(o) ~~Filing certificate by surviving foreign corporation that merger or consolidation has become effective under the laws of the jurisdiction of the foreign corporation which was a party to a merger or consolidation with a Michigan corporation~~ EXAMINING, FILING, AND COPYING CERTIFICATE OF CORRECTION, $10.00.

(p) Examining, filing, and copying certificate of revocation of dissolution proceedings, $10.00.

(q) Examining, filing, and copying certificate of renewal of corporate existence, $10.00.

(r) Filing and examination of any special report required by law, $2.00.

(s) Certifying any part of the files or records pertaining to a corporation for which no other provision is herein made, a minimum charge of $1.00 for each certificate, and 50 cents per folio for the matter so certified to.

(2) These fees shall be paid to the administrator at the time of filing or when the service is rendered by the administrator. The fees shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the general fund.

(3) Fees paid by or on behalf of domestic and foreign regulated investment companies as defined in section 1064 ~~of this act~~ shall be the same as are charged foreign and domestic corporations for the purposes hereinbefore specified.

Sec. 1063. (1) At the time of filing articles of incorporation with the administrator, the incorporators of any domestic corporation having shares without par value shall inform the administrator in writing of the amount of consideration proposed to be received for each share which shall be allocated to stated capital as determined under section 109. ~~At the time of applying for admission to do business in the state, any foreign corporation having shares without par value shall inform the administrator in writing of the amount of consideration received for each share which is allocated to stated capital as determined under section 109.~~ AT THE TIME OF FILING AN AMENDMENT TO THE ARTICLES OF INCORPORATION INCREASING THE AUTHORIZED CAPITAL STOCK OF ANY DOMESTIC CORPORATION, THE ADMINISTRATOR SHALL BE INFORMED IN WRITING OF THE AMOUNT OF CONSIDERATION RECEIVED FOR EACH SHARE WITHOUT PAR VALUE WHICH IS ALLOCATED TO STATED CAPITAL AS DETERMINED UNDER SECTION 109. AT THE TIME OF FILING A SUPPLEMENTAL STATEMENT, ANY FOREIGN CORPORATION HAVING SHARES WITHOUT PAR VALUE SHALL INFORM THE ADMINISTRATOR IN WRITING OF THE AMOUNT OF CONSIDERATION RE-

CEIVED FOR EACH SHARE WHICH IS ALLOCATED TO STATED VALUE AS DETERMINED UNDER SECTION 109. Such amount shall constitute the value placed upon each authorized share without par value as a basis for the franchise fees required under this section and under section 1062 ~~of this act~~. Whenever there shall be any increase in the authorized capital stock of the corporation as a result of an increase in the amount of stated capital represented by shares without par value which is not reflected in an amendment to the articles of incorporation there shall be filed with the administrator a statement in respect thereto, and there shall be paid to the administrator on account thereof an additional franchise fee, if due, such fee to be computed at the rate of ~~1/2 mill~~ 1/2 MILL on each dollar of increased value of authorized capital based upon such increase in stated capital represented by shares without par value. The corporation shall provide to the administrator such information as may be required by the administrator from time to time to determine the authorized capital stock of a corporation having stock without par value.

(2) IN NO EVENT SHALL THE VALUE ATTRIBUTED TO AUTHORIZED SHARES FOR FRANCHISE FEE PURPOSES UNDER THIS SECTION AND SECTION 1062 BE MORE THAN $100.00 PER SHARE. IF THE LIMITATION

IS APPLICABLE TO A FOREIGN CORPORATION, THE AMOUNT OF AUTHORIZED CAPITAL STOCK OF THE CORPORATION INITIALLY ATTRIBUTABLE TO THIS STATE PURSUANT TO SECTION 1062 SHALL BE REDETERMINED ACCORDINGLY.