Testimony of I. Matthew Miller,
Legislative Committee Chair of the Property Management Association of Michigan
Senate Judiciary Committee
December 4, 2012

RE: HB 4998

I appear before this Committee in support of the passage of HB 4998. The Property Management Association of Michigan (PMAM), for which I serve as chair of the legislative committee, was the driving force behind the introduction of this bill and it is our hope that it will pass this year.

The purpose of HB 4998 is to make three changes in the law to make evictions more efficient.

First, the bill would permit the entry of a money judgment for the same amount as the possession judgment entered against the tenant. There are some courts which believe that a money judgment should be pro-rated and the rent assessed against the tenant should be calculated by the date the case goes to court. There is no provision in the law for this activity and most leases charge by the month, not the day. The courts which require prorated money judgments have asserted that the reason they do so is because the tenant would not be obligated for the entire month's rent should the landlord re-rent the apartment prior to the end of the month. There are two problems with this argument: First, if that were the true case, then the rent should not be pro-rated as of the date of the hearing in court. There is no way, with the tenant still in possession of the premises, that the apartment would be rented to another tenant that very day. As it stands now, unless the court date were on the first of the month, it would be almost impossible for a landlord to begin to rent an apartment to another tenant during the same month as the eviction. For example, if the judgment enters on the fifth of the month, the tenant may redeem the apartment within 10 days, which brings us to the 15th of the month. On the 16th, the landlord can request the order of eviction. By the time it is delivered to the court, processed, and served by the court officer, another 5-10 days will elapse. So even in the best case, the eviction would take place around the 21st at the earliest. Then the landlord will have to prepare the apartment for re-rental and market it. The likelihood of that happening by the end of the month is virtually impossible. Second, even if it were to happen, the landlord would then have the obligation to enter an amended judgment as of the date the new tenant began to pay rent. So under the law, the tenant would not have to pay any more than that to which he is already responsible. Of course, if the court date is any later in the month, it would be an impossibility.

Second, the bill would permit the entry of a money judgment against a tenant without having to achieve personal service, after three attempts at personal service are made. Landlord-tenant cases are very fast-moving. By law, they are to be set for hearing within 10 days of filing and the process server must serve the case three days prior to the hearing. That does not leave much opportunity to make multiple efforts at personal service. Without personal service, a landlord can evict a tenant but only with personal service can the landlord get a money judgment. We think this is counter-intuitive. If a tenant can be evicted for not paying the money due without personal service, the landlord who has convinced a court that he is entitled to payment should be similarly entitled to a money judgment to collect that payment. In other words, without personal service, the landlord could testify in court that a tenant owes him $2,000.00. The court would grant a possession judgment for $2,000.00 and if the tenant does not pay that amount in 10 days, he can be evicted. The court has determined the amount the tenant owes. Assuming the tenant does not pay the amount and either skips or is evicted, why would the landlord not be entitled to collect that money simply because the process server was not able to hand-deliver the pleadings? The tenant owes the money – a court has already made that determination. The landlord should be able to get the judgment for which he paid an extra filing fee for the right to collect the money which is due. Even a tenant who has vacated the unit is still responsible for the rent. The landlord should not have to go chasing people who leave under the cover of darkness without paying their rent.

Finally, the bill directs the district courts not to limit the number of cases set for a hearing at one time on the same date. There are courts which have no problem processing and hearing more than 100 cases at a time. There are other courts which will not hear more than 3 or 4 at a time. These courts which limit filings ignore existing law which requires cases to be heard within 10 days, MCL 600.5735(2)(b). They simply do not set the matters for hearing within ten days by virtue of their excuse that they cannot hear more than a limited number of cases at a time. Some courts set matters for the same landlord on the same day but at different times. Some courts set matters on different days. Some courts even set matters filed together in different locations. These scheduling issues create inequality. First, it is unfair to certain tenants who go to court earlier than others in the same apartment community because those tenants have less time to pay their rent to remain in possession than the tenants whose cases are scheduled later. Second, it is unfair to the landlord to have to go to court repeatedly for the same property.

This bill clarifies the landlord-tenant procedures in Michigan. It is good policy which is overdue. The PMAM hopes the Senate will follow the House and pass HB 4998.