Testimony of I. Matthew Miller,
Legislative Committee Chair of the Property Management Association of Michigan
House Judiciary Committee
October 21, 2009

RE: HB 5034

I appear before this Committee in support of the passage of HB 5034 which was introduced by our friend, Rep. Pam Byrnes. 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 5034 is to allow landlords a mechanism to recover possession of their premises within a reasonable time after a tenant dies and to allow the removal and disposal of unclaimed property within the premises. The bill is based upon similar language which became law in Florida in 2007.

Currently, if a tenant dies and there is no co-tenant, only a probate court-appointed personal representative would have the authority to enter the apartment, to collect the personal belongings, and to receive service of a landlord-tenant lawsuit. Very frequently, there is no probate estate opened by the heirs of the deceased tenant, either because there are no heirs or no heirs care enough about the deceased tenant or his property to open the estate. Further, if there is an estate to be opened, the heirs do not share the landlord's urgency in doing so to empty the apartment to ready it for lease to another tenant. In the meanwhile, the estate becomes the obligated party for the rent, and, if there is to be no estate, the landlord is simply without recourse to collect the rent accrued during this time.

If the heirs do not open an estate, the landlord then bears the burden and expense of opening an estate as a creditor and having a public administrator appointed by the probate court to receive service of the landlord-tenant case, which upon its conclusion, would authorize the landlord to remove the premises' contents by the court officer. This is an expensive and time-consuming burden for the landlord. Not only does the landlord incur the costs of opening the estate, paying the public administrator's fee (which is usually a minimum of $500.00), and the fees related to the subsequent landlord-tenant case, but the landlord loses the revenue from the apartment until it can get possession, which takes a minimum of 90 days. By putting a time limit in the law by which an estate must be opened, it limits the landlord's financial burden and also allows the landlord to use self-help to empty the apartment. After all, if there are no heirs who care enough to open an estate to distribute the tenant's property, it should not fall to the landlord to do it.

This Bill allows a landlord to remove the items within the leased premises without having to open an estate when all of the following exist: the landlord must know or believe in good faith that the tenant has been dead for at least 30 days, the landlord must not have been notified of the existence of a probate estate for the deceased tenant, the current rent is not paid, and the landlord posted a notice on the door of the premises seven days prior to entry that the landlord intends to repossess the premises. Only if all of these conditions exist may the landlord enter the premises and remove the items within it.

The PMAM considers this an important improvement in the law, which clarifies the obligations of a landlord in dealing with the issues which arise out of the unfortunate passing of a tenant. It is our hope the committee will approve this bill.