

Memo

To: Representative Kahle
From: Brad Ward & Brian Westrin
Date: 12/08/2021
Re: **HB 5419**

Michigan Realtors® remains opposed to HB 5419 as drafted. While there are several bills in this legislative initiative that we believe represent important reforms, HB 5419 sets up a framework that would create significant confusion and unnecessary burden for home sellers.

- (1) HB 5419 overlaps and conflicts with federal law that has been in place for decades:
 - Applicable residential housing. HB 5419 applies to any residential structure constructed before 1978. Federal law contains exemptions – for example, exempts foreclosure sales. (Also Michigan’s lead-based paint accreditation program only applies to “target housing.”)
 - Reports under HB 5149 require only that seller provide a report indicating the presence of lead-based paint. (Remember the existence of lead-based paint is not the real problem – the real concern is whether the paint is peeling, chipping etc.) Federal law is broader – seller must provide anything they have pertaining to lead-based paint.
 - HB 5419 says buyer’s right to terminate purchase contract expires 72/120 days after receipt of report indicating whether lead-based paint is present. Federal law provides that before a purchase contract is binding only after:
 - a. Buyer must receive the federal disclosure pamphlet.
 - b. Contract must include Lead Warning Statement.
 - c. Buyer must have a 10-day opportunity to conduct own inspection.
- (2) HB 5419 is unique in that it obligates Michigan residents to hire the services of a particular industry – i.e., certified lead-based paint inspectors. This gives a great deal of power to these inspectors as the legislature does not and cannot really control the business model/contracts between these inspectors and their customers. If the State requires every seller

to hire one of these inspectors, they can do pretty much what they like in terms of cost, contract liability limitations etc.

In addition to cost concerns, there is no guarantee that the service being provided will be of any real value. The report being required here is very limited. The report will not discuss whether or not there are dangerous conditions – only whether lead-based paint is present. For liability reasons, it is highly unlikely that any report will ever say there is no lead-based paint present. So a report will either say that there is lead-based paint or that the inspector didn't find any lead-based paint, but given the age of the home, there may be lead-based paint that they didn't find. Obviously, a report that there may be lead-based paint present in a home built prior to 1978 is of no real value. We know that already.

In summary, having the two regulatory schemes would be very confusing for buyers, sellers and agents. And the federal lead-based paint disclosure requirements are much more expansive than under HB 5419 and provide better protection for buyers. Under federal law, buyers are already being told that if the house is built prior to 1978, it likely has lead-based paint and that there are significant health concerns. The information required under federal law is very detailed and includes a pamphlet and a warning statement in the purchase agreement. Under federal law, buyers are given the right to an inspection. Only thing HB 5419 adds is to impose an across-the-board obligation on all sellers to pay for a report which is of little real value. We believe the prospective buyer should seek out a variety of home inspection options. They, unlike the seller, are in a much better position to seek out and weigh the results of a lead-based paint inspection.