

Legislative Analysis



FORM OF MORTGAGE DOCUMENTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5832 as introduced
Sponsor: Rep. Joseph Rivet
Committee: Commerce
First Analysis (5-5-04)

BRIEF SUMMARY: The bill would rewrite a provision that prescribes the form that mortgage documents must take (although bankers say that the changes are technical rather than substantive).

FISCAL IMPACT: The bill has no state or fiscal impact.

THE APPARENT PROBLEM:

Public Act 187 of 1881 establishes the standards that mortgage documents are to meet in order to be valid. According to the Michigan Bankers Association, “two bankruptcy court decisions have erroneously held that a mortgage must contain the loan terms, such as the rate of interest and number of payments, to be valid. This has not been the case in Michigan. Some mortgages have included that information, but only as an additional safety mechanism to collect repayment on a loan.” As the bankers point out, “the mortgage is simply a document that is filed with the register of deeds to indicate that a lender has a lien on a specific piece of property.” This is distinct from the note, which is separate document that is the promise to pay the lender back. Technical amendments to the current statute have been proposed that will make this distinction clear and that will, supporters say, clarify the statute’s original intent.

THE CONTENT OF THE BILL:

The bill would amend Public Act 187 of 1881, which addresses the form of deeds and mortgages of real estate, to provide that a mortgage of lands, if it is worded substantially as required by the bill, is a valid and enforceable mortgage to the grantee, and the grantee’s heirs, assigns, successors, and personal representatives with warranty from the grantor and the grantor’s legal representatives, of marketable title in the grantor, free from prior incumbrances. The underlined expressions would replace “good and sufficient mortgage”, “perfect title”, and “against all previous incumbrances”, respectively.

The bill also would update the required wording of a mortgage of lands so that it would read: “A.B. mortgages and warrants to C.D., (here describe the premises) to secure the repayment of” (here describe the indebtedness or obligations the mortgage secures). It would require the mortgage to be signed by the grantor.

Currently, the act requires the mortgage to be read: “A.B. mortgages and warrants to C.D., (here describe the premises) to secure the repayment of” (here recite the sum for

which the mortgage is granted, or the notes or other evidence [evidences] of debt, or a description thereof, sought to be secured, also the date of the repayment). The act requires the mortgage to be “dated and duly signed, sealed and acknowledged by the grantor”.

Currently, the act says that if a mortgage in the above form omits the words “and warrant”, then the mortgage “shall be good but without warranty.” The bill would say, instead, that if the indebtedness or obligations secured are described generally, such as “All indebtedness that A.B. now and in the future owes C. D.”, and if the words “and warrant” are omitted from the form, the mortgage would be valid and enforceable, but without warranty.

MCL 565.154

SUGGESTED AMENDMENT:

The Michigan Bankers Association has proposed that the following amendment be adopted to make it clear that the bill merely restates the status quo: “The changes made by this amendatory act are declarative of the law as it existed immediately prior to the adoption of this amendatory act.”

ARGUMENTS:

For:

Supporters say that the bill makes technical amendments to the act that prescribes the form for valid mortgage documents in order to make the original intent of the statute clear. This would clear up problems created by two recent bankruptcy court decisions, say bankers. Archaic language would be removed and replaced by modern language that codifies existing practices.

POSITIONS:

The Michigan Bankers Association supports the bill. (5-4-04)

The Office of Financial and Insurance Services has no position at present because it is still reviewing the bill. (5-4-04)

Legislative Analyst: Chris Couch
Fiscal Analyst: Al Valenzio

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.