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Senate Bill 332 (Substitute S-4 as passed by the Senate)
Sponsor: Senator Ron Jelinek
Committee: Judiciary

Date Completed: 4-14-10

RATIONALE

Public Act 123 of 1915 allows an affidavit stating facts relating to certain matters that may affect the title to real property in Michigan to be recorded in the office of the register of deeds of the county where the property is located. An affidavit must be made by a person having knowledge of the facts or by any person competent to testify in open court concerning those facts. Reportedly, at one time, many county registers of deeds occasionally processed recordings corrected by affidavit when minor mistakes, such as typographical errors or incorrect or missing middle initials, were uncovered. Those types of errors or omissions became more frequent as refinancing of mortgage loans became increasingly popular in the late 1990s and early 2000s. Some registers of deeds evidently were advised by legal counsel not to process affidavits to correct previous recordings, because that is not one of the matters for which affidavits are authorized under Public Act 123. As a result, entire documents in which minor errors are identified must be reprocessed and rerecorded. In some counties, this can amount to hundreds or thousands of documents a year. To address this situation, some people believe that the law should allow an affidavit correcting particular types of errors in previously recorded documents to be recorded.

CONTENT

The bill would amend Public Act 123 of 1915 to allow an affidavit correcting certain errors or omissions in

previously recorded documents to be recorded with the register of deeds.

Specifically, an affidavit to correct the following types of errors or omissions in previously recorded documents could be recorded in the office of register of deeds for the county where the real property that was the subject of the affidavit was located:

- Errors relating to the proper place of recording.
- Scrivener's errors or omissions.

The affidavit would have to be made by a person with knowledge of the relevant facts or by a person competent to testify concerning those facts in open court, and would have to meet the requirements of Sections 1b and 1c of the Act. (Section 1b provides that any person who knowingly makes any false statement in an affidavit is guilty of perjury. Section 1c requires an affidavit to include a description of the land whose title may be affected by facts stated in the affidavit, and allows a deed, will, mortgage, or other instrument affecting the title that contains a full and adequate description of the land to be incorporated in the affidavit by reference.)

An affidavit to correct errors or omissions would not be necessary if a new document indicating corrective changes and making reference to the errant recording by liber and page number, or other unique identifying number, were recorded. The affidavit could not alter the substantive rights of any party unless that party executed it.

The register of deeds would have to index all names recited within an affidavit recorded under the bill.

Proposed MCL 565.451d

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would ease an unnecessary burden that often is placed on parties to property transfers, title companies, and registers of deeds when minor errors are found on recorded documents dealing with real estate transactions. Several years ago, some county registers of deeds were advised not to correct errors on recorded documents through the filing of an affidavit, meaning that entire documents have to be redrawn and rerecorded in the event an error is identified. Since the late 1990s, when mortgage rates began to fall quickly, the number of recorded real estate documents has increased significantly. At the same time, perhaps due to the volume and speed of the processing and recording of those documents, registers of deeds began seeing a sharp increase in typos and other minor errors. In Saginaw County, for example, according to that county's register of deeds, the number of documents with those kinds of errors went from just a few to perhaps thousands. Rerecording these documents in their entirety can be time-consuming and costly to the parties to a real estate transfer, the title company handling the transaction, and the county register of deeds. Filing an affidavit to correct errors would be a much easier and more reasonable solution than rerecording real estate transfer documents.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.