



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 671 (as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Local Government

Date Completed: 4-3-18

RATIONALE

Some people have raised concerns about a Michigan law that provides for marketable record title, which generally refers to an ownership interest in land that can be transferred to a new owner without the likelihood that another person will claim an interest in the property. Like similar laws of many other states, Michigan's statute limits the number of years during which someone may assert a claim, such as a lien, or a land use restriction. This in turn limits the period of time for which recorded instruments must be examined, sometimes called the look-back period. Subject to exceptions, if action is not taken to assert an interest during the specified time frame, the interest is extinguished by law. Michigan's marketable title statute was enacted by Public Act 200 of 1945 and most recently amended in 1997. Under the Act, a person possesses a marketable record title to an interest in land if he or she has an unbroken chain of title to the interest for 40 years or, as provided by the 1997 amendments, 20 years for mineral interests. In other words, a document creating that person's interest has been recorded within the 40- or 20-year period, and nothing that would conflict with or deny the person's interest (or "purport to divest" the interest) has been recorded within that period. Subject to exceptions, the Act extinguishes a claim that may affect the person's interest if the claim depends on an event or transaction preceding the 40- or 20-year period unless, within that period, a notice of claim has been recorded.

Despite these provisions, there are times when an extensive investigation or litigation is necessary to determine whether there are limitations on a title or whether old restrictions remain valid. It has been suggested that this is due to a lack of clarity in the Act regarding what must be specified in a claim to preserve an interest. Evidently, it is common for deeds or purchase agreements to contain generic statements such as "subject to anything of record" or "subject to existing use restrictions, if any", which may or may not preserve title restrictions. Reportedly, land title companies are reluctant to issue title insurance in these situations, which can impede development.

To address these issues, some have recommended that the Act should require a person who wants to preserve an interest in property to refer specifically to the document that created it, when conveying title to the property, and require a person who wants to claim an interest to include particular information in the notice that must be recorded.

CONTENT

The bill would amend Public Act 200 of 1945 to specify that a conveyance or other title transaction in the chain of title would purport to divest an interest in the property only if it created the divestment or specifically referred to a previously recorded conveyance or other title transaction that created the divestment.

The bill also specifies information that a notice of claim would have to contain and, if a notice of claim were based on a recorded instrument, would require the notice to contain particular information about that instrument.

In addition, the bill would allow claims against a marketable record title to be recorded within two years after the bill's effective date.

The bill would repeal Section 9 of the Act (which allowed claims to be preserved by the filing of a notice of claim before February 1, 1948).

The bill would take effect 90 days after it was enacted.

Chain of Title; Divestment of Interest

Under the Act, to possess a marketable record title to an interest in land, a person must have held an unbroken chain of title of record for 20 years for mineral interests and 40 years for other interests. The marketable record title is subject only to claims to that interest and defects of title that are not extinguished or barred by application of the Act, as well as any interests and defects in records forming the chain of record title that are recorded during the 20-year period for mineral interests or the 40-year period for other interests.

A person is considered to have an unbroken chain of title to an interest in land if the official public records disclose either of the following:

- A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, that purports to create the interest in that person, with nothing appearing of record purporting to divest the person of the interest.
- A conveyance or other title transaction within the past 20 years for mineral interests and 40 years for other interests, that purports to create the interest in some other person and other conveyances or title transactions of record by which the purported interest has become vested in the person considered to have an unbroken chain of title, with nothing appearing of record purporting to divest the person of the interest.

The bill specifies that, for these purposes, a conveyance or other title transaction in the chain of title would purport to divest an interest in the property only if it created the divestment or if it specifically referred by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment.

Preservation of Claim

The Act states that marketable title is held by a person and is taken by his or her successors in interest free and clear of any and all interests, claims, and charges that depend in whole or in part on any act, transaction, event, or omission that occurred before the 20-year period for mineral interests, or the 40-year period for other interests.

A person may preserve an interest, claim, or charge, however, by filing for record during the 20-year period for mineral interests or the 40-year period for other interests, a written notice, verified by oath, setting forth the nature of the claim.

To be effective and entitled to be recorded, a notice of claim must contain an accurate and full description of all the land affected by the notice, and the description must be set forth in particular terms.

If the claim is founded on a recorded instrument, however, the description may be the same as that contained in the recorded instrument. The bill would delete this provision. Under the bill, if the claim were founded on a recorded instrument, in addition to the description of all the land affected, the notice would have to state the liber and page or other county-assigned unique identifying number of the recorded instrument the claim was founded on. The failure to include the liber and page or other county-assigned unique identifying number would render the recording ineffective and the claim unrecorded. The notice would have to contain all of the following:

- The claimant's name, mailing address, and signature.
- The interest claimed to be preserved.
- The liber and page or other unique identification number of the instrument creating the interest to be preserved.
- The legal description of the real property affected by the claimed interest.
- An acknowledgement in the form required by the Uniform Recognition of Acknowledgements Act, and Section 27 of the Michigan Notary Public Act.
- The drafter's name and address.
- An address to which the document could be returned.

(The Uniform Recognition of Acknowledgements Act provides for the recognition to be given to acknowledgments and notarial acts outside the State, and establishes requirements for certification of an acknowledgment. Section 27 of the Michigan Notary Public Act requires a notary to place certain information on each record upon which he or she performs a notarial act.)

Two-Year Period for Filing

Under the bill, a marketable record title would be subject to interests recorded within two years after the bill's effective date, in addition to the 20-year period for recording mineral interests and the 40-year for recording other interests. A person could preserve an interest, claim, or charge by filing for record a notice, as required for filing a notice of a claim during the 20- or 40-year period, within two years after the bill's effective date.

MCL 565.101 et al.

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 determination of who owns or holds an interest in land requires an examination of all deeds, leases, or other instruments conveying or affecting that property that have been recorded with the office of register of deeds in the county where the property is located. Before the marketable record title statute was enacted, this could have involved an examination of recorded instruments filed over a period of almost 200 years, from the issuance and recording of a United States land patent or confirmation of a British or French grant. Like the marketable record title laws of other states, Michigan's statute extinguishes ancient interests and limits how far back a title search must be made.

Enacted in 1945, Michigan's act reportedly was the first of its kind, and the drafters did not have the benefit of subsequent legislation or other states' experience to guide them. Since that time, the statute's lack of clarity has made it difficult in some cases to determine whether outstanding claims or interests exist or remain valid. Many documents conveying property contain vague or generic language; a deed might state that it is "subject to anything of record", for example, or a purchase agreement might indicate that the sale is subject to any easements or restrictions that may exist. It is not clear whether these statements are adequate to preserve old interests, and identifying those interests may be a challenge. As a result, the title industry apparently is bearing the economic consequences of the ambiguity. This has impeded development across the State, particularly in older communities where there are likely to be early restrictions, which might conflict with current zoning ordinances. The potential existence of undetected interests is a cloud on the title, an expense to those engaged in current transactions, and a drag on marketability of real estate.

The bill would address this situation by requiring a person who wanted to preserve an interest to refer to the recorded document creating that interest. If a person selling property wanted a less-than-40-year-old land use restriction to continue, the seller would have to spell it out and identify

the recorded instrument that created that restriction. For example, if a member of a neighborhood association wanted to sell his or her home subject to a restriction that use of the property was limited to residential purposes, he or she would have to include in the deed or other instrument conveying title reference to the document that created the land use restriction. In a different type of situation, if a person had an easement across someone else's property, he or she would have to record a notice claiming that interest. The notice would have to contain specific information about the person making the claim, the interest claimed (the easement, in this example), a reference number to the document that created the interest, and the property affected by the claimed interest. These requirements would make an interest as identifiable as possible.

The Act states that it must be construed to "effect the legislative purpose of simplifying and facilitating land title transactions...". Although that goal has been frustrated by the law's lack of clarity, the bill would remedy the problem and carry out the purpose set forth in 1945. Rather than preserving old restrictions inadvertently and requiring burdensome investigations into the existence of interests, as the current law does, the bill would establish a clear process for land owners to preserve an interest and for others to claim an interest.

Supporting Argument

The bill would establish a two-year period during which a person could record claims against a marketable record title. This would be similar to the three-year period that was allowed for filing claims after the original statute created the 40-year look-back period, and the three-year period allowed after the 1997 amendments reduced the look-back period to 20 years for mineral interests. To afford due process of law to those whose interests would have been extinguished by the shortened periods, the Act and the amendments provided a window within which people could assert their interests. Because the bill's new requirements for preserving a claim also could have the effect of extinguishing interests, the bill would give people two years to record a notice of claim to an interest in land.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Ryan Bergan

SASVA1718\671a

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.