

HOUSE BILL No. 5864

May 14, 1998, Introduced by Reps. Dobronski, Freeman, Alley and Wallace and referred to the Committee on Local Government.

A bill to amend 1846 RS 65, entitled
"Of alienation by deed, and the proof and recording of conveyances, and the canceling of mortgages,"
by amending section 25 (MCL 565.25), as amended by 1996 PA 526.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 25. (1) In the entry book of deeds, the register shall
2 enter all deeds of conveyance absolute in their terms, and not
3 intended as mortgages or securities, and all copies left as
4 cautions. In the entry book of mortgages the register shall
5 enter all mortgages and other deeds intended as securities, and
6 all assignments of any mortgages or securities. In the entry
7 book of levies the register shall enter all levies, attachments,
8 liens, notices of lis pendens, sheriffs' certificates of sale,
9 United States marshals' certificates of sale, other instruments
10 of encumbrances, and documentation required under subsection (2),

1 noting in the books, the day, hour, and minute of receipt, and
2 other particulars, in the appropriate columns in the order in
3 which the instruments are respectively received.

4 (2) Except as otherwise provided in subsection (3), the
5 REGISTER OF DEEDS SHALL NOT RECEIVE FOR recording ~~of~~ a levy,
6 attachment, lien, lis pendens, sheriff's certificate, marshal's
7 certificate, or other instrument of encumbrance ~~does not perfect~~
8 ~~the instrument of encumbrance~~ ON REAL OR PERSONAL PROPERTY OF
9 ANOTHER unless THE PERSON PRESENTING IT PRESENTS both of the
10 following: ~~are found by a court of competent jurisdiction to~~
11 ~~have accompanied the instrument when it was presented to the reg-~~
12 ~~ister for entry:~~

13 (a) A ~~full and fair accounting of the facts that support~~
14 ~~recording of the instrument of encumbrance and supporting docu-~~
15 ~~mentation, as available~~ COMPLETE LEGAL DESCRIPTION OF THE PROP-
16 ERTY UPON WHICH THE LIEN IS BEING FILED.

17 (b) Proof of service that actual notice has been given to
18 the recorded landowner of the land to which the instrument of
19 encumbrance applies.

20 (3) Subsection (2) does not apply to any of the following:

21 (a) A tax lien that is not required to be recorded pursuant
22 to the general property tax act, ~~Act No. 206 of the Public Acts~~
23 ~~of 1893, being sections 211.1 to 211.157 of the Michigan Compiled~~
24 ~~Laws~~ 1893 PA 206, MCL 211.1 TO 211.157.

25 (b) The filing of an instrument of encumbrance authorized by
26 state statute or federal statute.

1 (c) The filing of a consensual agreement to encumber real
2 property entered into between the owner of real property and the
3 person who seeks to record an encumbrance. A consensual agree-
4 ment includes but is not limited to a mortgage, loan agreement,
5 land contract, or other consensual or contractual agreement of
6 whatever description entered into between the owner of real prop-
7 erty and the person who seeks to record an encumbrance.

8 (d) The filing of an encumbrance authorized in a final order
9 by a court of competent jurisdiction.

10 (e) A filing of a levy, attachment, lien, lis pendens,
11 sheriff's certificate, marshal's certificate, or other instrument
12 of encumbrance by a commercial lending institution. As used in
13 this section, "commercial lending institution" means any of the
14 following:

15 (i) A state or nationally chartered bank.

16 (ii) A state or federally chartered savings and loan associ-
17 ation or savings bank.

18 (iii) A state or federally chartered credit union.

19 (iv) Any other state or federally chartered lending institu-
20 tion or regulated affiliate or regulated subsidiary of any entity
21 listed in this subparagraph or subparagraphs (i) to (iii).

22 (v) An insurance company authorized to do business in this
23 state pursuant to the insurance code of 1956, ~~Act No. 218 of the~~
24 ~~Public Acts of 1956, being sections 500.100 to 500.8302 of the~~
25 ~~Michigan Compiled Laws~~ 1956 PA 218, MCL 500.100 TO 500.8302.

26 (vi) A motor vehicle finance company subject to the motor
27 vehicle sales finance act, ~~Act No. 27 of the Public Acts of the~~

1 ~~Extra Session of 1950, being sections 492.101 to 492.141 of the~~
2 ~~Michigan Compiled Laws~~ 1950 (EX SESS) PA 27, MCL 492.101 TO
3 492.141, with net assets in excess of \$50,000,000.00.

4 (vii) A foreign bank.

5 (viii) A retirement fund regulated pursuant to state law, or
6 a pension fund of a local unit of government or a pension fund
7 regulated pursuant to federal law with net assets in excess of
8 \$50,000,000.00.

9 (ix) A federal, state, or local agency authorized by law to
10 hold a security interest in real property or a local unit of gov-
11 ernment holding a reversionary interest in real property.

12 (x) A nonprofit tax exempt organization created to promote
13 economic development in which a majority of the organization's
14 assets are held by a local unit of government.

15 (xi) An entity within the federally chartered farm credit
16 system.

17 (xii) A licensee under the mortgage brokers, lenders, and
18 servicers licensing act, ~~Act No. 173 of the Public Acts of 1987,~~
19 ~~being sections 445.1651 to 445.1684 of the Michigan Compiled~~
20 ~~Laws~~ 1987 PA 173, MCL 445.1651 TO 445.1684.

21 (xiii) A holder under the home improvement finance act, ~~Act~~
22 ~~No. 332 of the Public Acts of 1965, being sections 445.1101 to~~
23 ~~445.1431 of the Michigan Compiled Laws~~ 1965 PA 332, MCL 445.1101
24 TO 445.1431.

25 (xiv) A retail seller under the retail installment sales
26 act, ~~Act No. 224 of the Public Acts of 1966, being~~

1 ~~sections 445.851 to 445.873 of the Michigan Compiled Laws 1966~~
2 PA 224, MCL 445.851 TO 445.873.

3 (xv) A licensee under ~~Act No. 125 of the Public Acts of~~
4 ~~1981, being sections 493.51 to 493.81 of the Michigan Compiled~~
5 ~~Laws, pertaining to secondary mortgages~~ THE SECONDARY MORTGAGE
6 LOAN ACT, 1981 PA 125, MCL 493.51 TO 493.81.

7 (xvi) A licensee under the consumer financial services act,
8 ~~Act No. 161 of the Public Acts of 1988, being sections 487.2051~~
9 ~~to 487.2072 of the Michigan Compiled Laws~~ 1988 PA 161,
10 MCL 487.2051 TO 487.2072.

11 (xvii) A licensee under the regulatory loan act of 1963,
12 ~~Act No. 21 of the Public Acts of 1939, being sections 493.1 to~~
13 ~~493.26 of the Michigan Compiled Laws~~ 1939 PA 21, MCL 493.1 TO
14 493.26.

15 (xviii) A regulated lender under the credit reform act, ~~Act~~
16 ~~No. 162 of the Public Acts of 1995, being sections 445.1851 to~~
17 ~~445.1864 of the Michigan Compiled Laws~~ 1995 PA 162, MCL 445.1851
18 TO 445.1864.

19 (4) The instrument shall be considered as recorded at the
20 time so noted and shall be notice to all persons except the
21 recorded landowner subject to subsection (2), of the liens,
22 rights, and interests acquired by or involved in the
23 proceedings. All subsequent owners or encumbrances shall take
24 subject to the perfected liens, rights, or interests.

25 (5) A person who is not exempt under subsection (3) who
26 encumbers property through the recording of a document listed
27 under subsection (2) without lawful cause with the intent to

1 harass or intimidate any person is liable for the penalties set
2 forth in section 2907a of the revised judicature act of 1961,
3 ~~Act No. 236 of the Public Acts of 1961, being section 600.2907a~~
4 ~~of the Michigan Compiled Laws~~ 1961 PA 236, MCL 600.2907A.