

Act No. 357
Public Acts of 2008
Approved by the Governor
December 23, 2008
Filed with the Secretary of State
December 23, 2008
EFFECTIVE DATE: December 23, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Hunter, Cherry, Gleason, Thomas, Scott and Van Woerkom

ENROLLED SENATE BILL No. 927

AN ACT to amend 1846 RS 65, entitled "Of alienation by deed, and the proof and recording of conveyances, and the canceling of mortgages," by amending sections 24 and 25 (MCL 565.24 and 565.25), section 25 as amended by 1996 PA 526, and by adding section 24a.

The People of the State of Michigan enact:

Sec. 24. (1) Upon delivery of an instrument to the register of deeds for the purpose of recording, the register shall note the date, hour, and minute of delivery on the first page of the instrument using a stamp or other method signifying that the date, hour, and minute was affixed by the register or a duly authorized representative of the register. If the instrument is received in bulk with other instruments, the date, hour, and minute of delivery shall be affixed in the manner required by this section as soon as is practical after its delivery. The date, hour, and minute so noted shall be presumed to be the date and time of delivery.

(2) Each instrument delivered to a register shall be accessible for public review. Accessibility shall be satisfied by providing the instrument inscribed in a tangible medium when requested. The requirement of this subsection shall be considered to be satisfied if the length of time between a request to locate a particular document or documents and the time the search is initiated and completed is reasonable in light of the volume of all instruments being recorded and the ability to access the requested documents without undue disruption to the office of the register. A register of deeds also may, but is not required to, do any of the following:

(a) Provide at least the first page of the instrument, stored in an electronic or other medium.

(b) Provide a temporary searchable journal containing at least the date of delivery, title of the instrument, and the names of the parties to the instrument.

(3) Any information created or maintained under subsection (2) may be destroyed when the instrument is entered into the index described in section 28 of this chapter or when the instrument is not accepted for recording.

(4) A register shall not charge a fee for any review or search under subsection (2) unless it involves the search of an original instrument. An original instrument is available for public review only in the presence of the register, deputy register, or a representative of the register appointed for that purpose. When a name search is performed by the register or a representative of the register, a reasonable fee, not to exceed \$15.00 for each 15 minutes or fraction thereof, may be charged for any search or review requested.

(5) Subsections (2) to (4) do not apply once the instrument is indexed as required in section 28 of this chapter.

(6) The register of deeds shall post in a conspicuous place in the register's office the general index date and shall maintain a record that memorializes both the calendar date and general index date that was posted on that calendar date. This public record shall be maintained in any reasonable medium that the register of deeds may select in his or

her sole discretion. As used in this subsection, “general index date” means that date through which all recorded instruments bearing a delivery date up to and including the general index date have been fully recorded at length and indexed and are available for public inspection.

(7) If a county register of deeds or an officer, employee, or agent of a register of deeds is, or believes he or she is, acting within the scope of his or her authority and in the course of his or her employment when authorizing, conducting, or deciding when or whether to conduct a search under subsection (2), that action is within the exercise or discharge of his or her governmental function, and the register of deeds or the officer, employee, or agent is immune from any claim for liability, including tort liability, that might otherwise entitle any person or other entity or corporation to monetary damages. The civil immunity provided under this section is in addition to any civil immunity provided under law, including, but not limited to, the application of section 7 of 1964 PA 170, MCL 691.1407.

Sec. 24a. (1) The register’s assignment of a liber and page or other unique identifying number is prima facie evidence that the instrument has satisfied all recording requirements, including the payment of fees, and has been accepted for recording.

(2) An instrument is deemed to be recorded at the date and time of delivery to the register if the instrument is later determined to have satisfied all recording requirements, including the payment of fees.

(3) When an instrument that was rejected on a prior occasion is delivered, a new delivery date and time shall be noted on the face of the instrument as required by section 24 of this chapter, and the later date and time shall be rebuttably presumed to be the date and time of delivery.

Sec. 25. (1) Except as otherwise provided in subsection (2), the recording of a levy, attachment, lien, lis pendens, sheriff’s certificate, marshal’s certificate, or other instrument of encumbrance does not perfect the instrument of encumbrance unless both of the following are found by a court of competent jurisdiction to have accompanied the instrument when it was delivered to the register under section 24(1) of this chapter:

(a) A full and fair accounting of the facts that support recording of the instrument of encumbrance and supporting documentation, as available.

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

(2) Subsection (1) does not apply to any of the following:

(a) A tax lien that is not required to be recorded pursuant to the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

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

(c) The filing of a consensual agreement to encumber real property entered into between the owner of real property and the person who seeks to record an encumbrance. A consensual agreement includes but is not limited to a mortgage, loan agreement, land contract, or other consensual or contractual agreement of whatever description entered into between the owner of real property and the person who seeks to record an encumbrance.

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

(e) A filing of a levy, attachment, lien, lis pendens, sheriff’s certificate, marshal’s certificate, or other instrument of encumbrance by a commercial lending institution. As used in this section, “commercial lending institution” means any of the following:

(i) A state or nationally chartered bank.

(ii) A state or federally chartered savings and loan association or savings bank.

(iii) A state or federally chartered credit union.

(iv) Any other state or federally chartered lending institution or regulated affiliate or regulated subsidiary of any entity listed in this subparagraph or subparagraphs (i) to (iii).

(v) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(vi) A motor vehicle finance company subject to the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, with net assets in excess of \$50,000,000.00.

(vii) A foreign bank.

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

(ix) A federal, state, or local agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

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

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

(xii) A licensee under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(xiii) A holder under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(xiv) A retail seller under the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

(xv) A licensee under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, pertaining to secondary mortgages.

(xvi) A licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

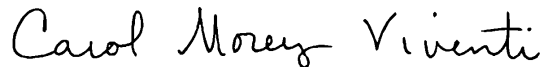
(xvii) A licensee under the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

(xviii) A regulated lender under the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

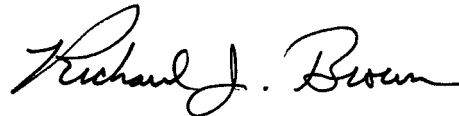
(3) A person who is not exempt under subsection (2) who encumbers property through the recording of an instrument listed under subsection (1) without lawful cause with the intent to harass or intimidate any person is liable for the penalties set forth in section 2907a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2907a.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1160 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor