

Legislative Analysis



CORRECTED REAL ESTATE DOCUMENTS

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

House Bill 4928 as introduced
Sponsor: Rep. Kevin Cotter
Committee: Judiciary
First Analysis (4-20-12)

BRIEF SUMMARY: The bill would allow affidavits to correct errors or omissions in previously recorded real estate documents.

FISCAL IMPACT: The bill would have no fiscal impact on the Judiciary.

THE APPARENT PROBLEM:

It is not uncommon for documents (affidavits) concerning real property (such as deeds and mortgages) that are filed with a county register of deeds to contain errors. Even a seemingly minor error can affect the description of the property or the names of the parties and impact transactions involving the property down the road. Apparently, the low-interest rates of a decade ago, coupled with the subsequent mortgage foreclosure crisis, resulted in not only an increase of filings but also an increase in the number of documents needing corrections.

Reportedly, some registers of deeds were told for several years that when an error was discovered in a previously filed affidavit, all affected parties must be brought back together to re-execute and re-record the document. This can be difficult when a bank or other mortgage lender has gone out of business or one of the parties refuses to come in to sign the new document. Adding to the confusion is that other registers of deeds have been told more recently by county attorneys that re-recording the document is not necessary as long as a sworn affidavit is executed by a person with knowledge of the facts. In addition, there have been problems or inconsistencies in how these affidavits to correct errors have been filed. In one case, a single title company filed 135 affidavits to correct errors, but the affidavits were not cross-referenced or recorded as to effect on the deed.

In a measure to address the issue, legislation has been introduced to simplify the process of correcting certain minor errors, such as scrivener errors or errors where the document had been recorded.

THE CONTENT OF THE BILL:

House Bill 4928 would add a new section to Public Act 123 of 1915, which concerns recording affidavits affecting real property, to allow affidavits to correct errors or omissions in previously recorded documents (MCL 565.451d).

The bill would specify that an affidavit to correct errors or omissions in previously recorded documents relating to the proper place of recording and to scriveners errors or omissions could be recorded in the Office of Register of Deeds for the county where the real property that is the subject of the affidavit was located.

An affidavit recorded under the bill could only be made by a person having 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 Section 1c of the act. [Section 1c concerns the protocols to be used for land descriptions.] In addition, the affidavit could not alter the substantive rights of any party unless it was executed by that party.

A county register of deeds would be required to index all names recited within an affidavit to correct an error or omission recorded under the bill. Lastly, the bill would not prohibit the recording of a corrected version of the previously recorded document indicating the corrective changes and making reference to the previously recorded document by liber and page number or by another unique identifying number.

BACKGROUND INFORMATION:

The bill is identical to Senate Bill 684 of this session and similar to House Bill 4503 and Senate Bill 332 of the 2009-2010 legislative session. Both bills were passed by their respective chambers, with HB 4503 dying on the floor of the Senate in the closing days of the two-year legislative cycle.

ARGUMENTS:

For:

The bill would create a simpler process to correct certain errors contained in documents recorded by county registers of deeds, such as mortgages and deeds. Instead of requiring all parties to the document to come back to sign a new document, any person with knowledge of the facts, or who could testify in open court about the matter, could file a sworn affidavit to make the needed corrections. Sometimes, it is the register of deeds who may notice a typographical error or that the document had not been filed in the proper place. The bill would allow the register of deeds or other person (including any of the parties) to make the necessary change or file the document appropriately.

Currently, a person who knowingly makes a false statement in an affidavit is guilty of perjury and would face criminal penalties. Plus, the bill would only allow an affidavit to correct more minor errors - nothing that would alter the substantive rights of any of the parties (unless executed by that party). Therefore, the bill is likely to increase the efficiency of correcting recorded documents.

Against:

According to the Real Property Law Section of the State Bar of Michigan, the bill is likely to lead to more problems that it would solve. By allowing any person to correct what he or she identifies as an "error" in a previously recorded real estate document, the

Section believes the bill as written is too broad, thus allowing abuse and clouding the title, which in turn could create slander of title. Parties to an instrument (document) are already allowed under law to correct scrivener errors. Thus, though the bill is improved from previous versions of last session, the Section has gone on record that the concerns outlined above have yet to be addressed.

POSITIONS:

Representatives of the Ingham County and Tuscola County Register of Deeds Offices testified in support of the bill. (4-19-12)

The Real Property Law Section of the State Bar of Michigan opposes the bill. (11-2-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

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