Legislative Analysis

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MARKETABLE RECORD TITLE

Senate Bill 671 (H-2) as reported from House committee
Sponsor: Sen. Rick Jones
House Committee: Local Government
Senate Committee: Local Government ***(Enacted as Public Act 572 of 2018)***
Complete to 12-18-18

BRIEF SUMMARY: Senate Bill 671 would amend Public Act 200 of 1945 to include requirements for clear evidence and documentation referring to changes in the chain of title in any claim or counterclaim relating to the ownership of a marketable record title. In addition, the bill includes new requirements for a notice of claim and allows claims against a marketable record title to be recorded within two years after the bill's effective date.

FISCAL IMPACT: The bill would have no discernible fiscal impact on state or local government.

THE APPARENT PROBLEM:

Marketable record title 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. 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, for mineral interests, 20 years. 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 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. Legislation has been proposed to address these issues.

THE CONTENT OF THE BILL:

Divestment of Interest

Under the act, 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 states that, for these purposes, and except as to mineral interests, 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

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

The bill would require that in order for a notice of claim to be effective and entitled to be reported, it would have to contain an accurate and full description of all land affected by the notice. This description would have to be set forth in particular terms and not by general inclusions.

The bill would delete a provision stating that if the claim is founded on a recorded instrument, the description may be the same as that contained in the recorded instrument. Under the bill, except as to mineral interests, 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. In addition, the failure to include the liber and page or other county-assigned unique identifying number would render the recording ineffective and the claim unpreserved. The notice would have to contain all of the following:[1]

- The claimant's name, mailing address, and signature.
- The interest claimed to be preserved.
- Except as to mineral interests, 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 acknowledgment in the form required by the Uniform Recognition of Acknowledgments 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.

[1] The Uniform Recognition of Acknowledgments 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.

Oil and Gas

The bill would stipulate that the act does not affect any oil and gas lease or other interest in oil or gas, or any storage agreement or other interest in subsurface storage formations, owned by a person other than the owner of the surface.

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 would be able to 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.

HOUSE COMMITTEE ACTION:

The House Committee on Local Government reported an H-2 substitute for the bill. The substitute addresses clarity concerns that were raised regarding the intended scope of the bill by excepting mineral interests from the provisions of the bill, as described above, on the grounds that oil and gas are already covered by the Dormant Minerals Act.

ARGUMENTS:

For:

Supporters of the bill argued that the act's lack of clarity on which documents legitimately convey the ownership of property or the transfer of property ownership created an opening for erroneous claims and counterclaims for marketable titles to be made, leading to lengthy and wasteful legal struggles and hindering development in the state, especially in older communities. Supporters maintained that the bill would solve this issue by requiring a person to identify and spell out the document upon which they state their claim, as well as provide a properly written and documented notice of claim when the need arose. Supporters also argued that establishing the additional two-year period during which a person could record claims against a marketable title after the bill's effective date would give a chance for people whose interests would otherwise be extinguished to get their due process before that window closed.

POSITIONS:

A representative of the Michigan Land Title Association testified in support of the bill. (11-28-18).

The Real Property Law Section of the Michigan State Bar indicated opposition to the bill. (11-28-18).

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.