

HOUSE BILL NO. 6332

November 12, 2020, Introduced by Rep. Iden and referred to the Committee on Ways and Means.

A bill to amend 1945 PA 200, entitled

"An act to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof,"

by amending the title and sections 1, 1a, 2, 3, 4, 5, and 8 (MCL 565.101, 565.101a, 565.102, 565.103, 565.104, 565.105, and 565.108), sections 1, 2, 3, 4, and 5 as amended by 2018 PA 572 and

section 1a as added by 1997 PA 154, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to define a marketable record title to an interest in land; to require the ~~filing~~**recording** of notices of claim of interest in ~~such~~ land in certain cases within a definite period of time; ~~and to require the recording thereof;~~ to make invalid and of no force or **to provide the effect of** all claims with respect to the land affected ~~thereby where no such~~**the** notices of claim of interest are **not** filed within the required period; to provide for certain penalties for ~~filing~~**recording** slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation ~~thereof.~~**of this act.**

Sec. 1. Any person, that has the legal capacity to own land in this state, that has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, is at the end of the applicable period considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title ~~as~~**that** are not extinguished or barred by **the** application of this act and subject also to any interests and defects ~~as~~**that** are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and that are recorded within 2 years after the effective date of the amendatory act that added ~~section 2(2)~~**section 5a** or during the 20-year period for mineral interests and the 40-year period for other interests. However, a person is not considered to have a marketable record title ~~by reason of~~**under** this act if the land in which the interest exists is in the hostile possession of another.

1 Sec. 1a. As used in this act: ~~7, "mineral interest"~~

2 (a) "Claimant" means a person that holds an interest, claim,
3 or charge on land and has recorded a notice of claim under section
4 3 with the office of the register of deeds of the county in which
5 that land is located.

6 (b) "Mineral interest" means an interest in minerals in any
7 land if the interest in minerals is owned by a person other than
8 the owner of the surface of the land. Mineral interest does not
9 include an interest in oil or gas or an interest in sand, gravel,
10 limestone, clay, or marl.

11 (c) "Person" means an individual, corporation, limited
12 liability company, partnership, firm, organization, association,
13 governmental entity, or other legal entity.

14 (d) "Property owners' association" means any of the following:

15 (i) A person or an unincorporated association with a voting
16 membership that is made up of owners of the land or their agents,
17 or a combination of the owners of the land and their agents, that
18 is any of the following:

19 (A) Responsible for the operation or management of the land.

20 (B) Authorized to enforce a document recorded with the office
21 of the register of deeds of the county in which the land is located
22 that subjects the land to any land-use restriction or obligation.

23 (ii) An association of co-owners as that term is defined in
24 section 3 of the condominium act, 1978 PA 59, MCL 559.103.

25 (e) "Subdivision restrictions" means a declaration or other
26 instrument or agreement executed and recorded on or after January
27 1, 1950 that provides for the establishment of a property owners'
28 association with respect to which an owner of a lot or other parcel
29 of land that is the subject of the declaration or other instrument

1 **or agreement is a member.**

2 Sec. 2. (1) A person ~~is considered to have~~ **has** an unbroken
3 chain of title to an interest in land as provided in section 1 if
4 the ~~official public records disclose~~ **office of the register of**
5 **deeds of the county in which the land is located discloses** either
6 of the following:

7 (a) A conveyance or other title transaction not less than 20
8 years in the past for mineral interests and 40 years for other
9 interests, which conveyance or other title transaction purports to
10 create the interest in that person, with nothing appearing of
11 record purporting to divest that person of the purported interest.

12 (b) A conveyance or other title transaction not less than 20
13 years in the past for mineral interests and 40 years for other
14 interests, which conveyance or other title transaction purports to
15 create the interest in some other person and other conveyances or
16 title transactions of record by which the purported interest has
17 become vested in the person first referred to in this section, with
18 nothing appearing of record purporting to divest the person first
19 referred to in this section of the purported interest.

20 (2) For purposes of this section, except as to mineral
21 interests, a conveyance or other title transaction in the chain of
22 title purports to divest an interest in the ~~property~~ **land** only if
23 it ~~creates~~ **does either of the following:**

24 (a) **Creates** the divestment. ~~or if it~~

25 (b) **Except as otherwise provided in section 5a(1),**
26 specifically refers by liber and page or other county-assigned
27 unique identifying number to a previously recorded conveyance or
28 other title transaction that created the divestment.

29 Sec. 3. (1) Marketable **record** title is held by a person and is

1 taken by ~~his or her~~ **the person's** successors in interest free and
 2 clear of any and all interests, claims, and charges the existence
 3 of which depends in whole or in part on any act, transaction,
 4 event, or omission that occurred before the 20-year period for
 5 mineral interests, and the 40-year period for other interests, and
 6 all such interests, claims, and charges are void and of no effect
 7 at law or in equity. However, an interest, claim, or charge may be
 8 preserved and kept effective by ~~filing for record~~ **recording** within
 9 2 years after the effective date of the amendatory act that added
 10 ~~section 2(2)~~ **section 5a** or during the 20-year period for mineral
 11 interests ~~and or~~ the 40-year period for other interests, a notice
 12 ~~in writing, verified by oath, setting forth the nature of the claim~~
 13 ~~in the manner required by section 5.~~ **of claim that satisfies the**
 14 **requirements of section 5. However, an interest, claim, or charge**
 15 **that is void under this subsection before the effective date of the**
 16 **amendatory act that added section 5a or that expires or terminates**
 17 **based on its own terms is not effective and must not be preserved**
 18 **by recording a notice of claim under this subsection.**

19 (2) A disability or lack of knowledge of any kind on the part
 20 of anyone does not suspend the running of the 20-year period for
 21 mineral interests or the 40-year period for other interests.

22 (3) For the purpose of recording notices of claim for
 23 homestead interests, the date from which the 20-year period for
 24 mineral interests and the 40-year period for other interests run is
 25 the date of recording of the instrument that contains the basis for
 26 the claim.

27 (4) A notice **of claim** under this section may be ~~filed for~~
 28 ~~record~~ **recorded** by ~~the~~ **any of the following:**

29 (a) **The claimant.** ~~or by any~~

1 **(b) The claimant's agent.**

2 **(c) A property owners' association.**

3 **(d) Any** other person acting on behalf of any claimant if 1 or
4 more of the following conditions exist:

5 **(i)** ~~(a)~~ The claimant is under a disability.

6 **(ii)** ~~(b)~~ The claimant is unable to assert a claim on his or her
7 own behalf.

8 **(iii)** ~~(c)~~ The claimant is 1 of a class but whose identity cannot
9 be established or is uncertain at the time of ~~filing~~ **recording** the
10 notice of claim. ~~for record.~~

11 **(5) The recording of a notice of claim under this section by a**
12 **claimant that meets all the requirements of this act to preserve**
13 **the claimant's rights in the land is an effective notice under this**
14 **section for any other person whose rights originate from the same**
15 **document as the claimant's.**

16 Sec. 4. (1) This act must not be applied to do any of the
17 following:

18 (a) Bar a lessor or his or her successor as reversioner of his
19 or her right to possession on the expiration of a lease or a lessee
20 or his or her successor of his or her rights in and to a lease.

21 (b) Bar any interest of a mortgagor or a mortgagee or interest
22 in the nature of that of a mortgagor or mortgagee until after the
23 instrument under which the interest is claimed has become due and
24 payable, except if the instrument has no due date expressed, **or** if
25 the instrument has been executed by a railroad, railroad bridge,
26 tunnel, ~~ex~~ union depot company, or a public utility or public
27 service company.

28 (c) Bar or extinguish an easement or interest in the nature of
29 an easement, the existence of which is clearly observable. ~~by~~

~~physical evidences of its use.~~

(d) Bar or extinguish an easement or interest in the nature of an easement, or any rights appurtenant to the easement or interest granted, excepted, or reserved by a recorded instrument creating the easement or interest, including any rights for future use, if the existence of the easement or interest is evidenced by the location beneath, on, or above any part of the land described in the instrument of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of the facility is observable, ~~by reason~~ **because of the** failure to ~~file-record~~ the notice required by this act.

(e) **Bar or extinguish a conservation easement. As used in this subdivision, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.**

(f) **Bar or extinguish the rights of any remainderman on the expiration of a life estate or trust.**

(g) **Bar or extinguish any subdivision restrictions.**

(h) **Bar or extinguish any recorded master deed for a condominium or any recorded amendment to that condominium master deed.**

(2) This act does not affect any right, title, or interest in land owned by the United States, ~~or any right, title, or interest in any land owned by this state, or by any department, commission, or political subdivision thereof.~~ **of this state.**

(3) This act does not affect any oil and gas lease, or other interest in oil or gas, owned by a person other than the owner of the surface, or any storage agreement or other interest in

1 subsurface storage formations owned by a person other than the
2 owner of the surface.

3 Sec. 5. (1) To be effective and to be entitled to record, a
4 notice of claim under section 3 must contain an accurate and full
5 description of all the land affected by the notice ~~, which and the~~
6 description must be set forth in particular terms and not by
7 general inclusions. ~~However, except as to mineral interests, if the~~
8 ~~claim is founded on a recorded instrument, the notice must also~~
9 ~~state the liber and page or other county assigned unique~~
10 ~~identifying number of the recorded instrument the claim is founded~~
11 ~~on. The failure to include the liber and page or other county-~~
12 ~~assigned unique identifying number renders the recording~~
13 ~~ineffective and the claim unpreserved.~~ The notice **of claim** must
14 contain all of the following:

15 (a) The claimant's name.

16 (b) The claimant's mailing address.

17 (c) The interest claimed to be preserved.

18 (d) Except as to mineral interests, the liber and page or
19 other unique identification number ~~of the~~ **assigned by the office of**
20 **the register of deeds for the recorded** instrument creating the
21 interest to be preserved.

22 (e) The legal description of the ~~real property~~ **land** affected
23 by the claimed interest.

24 (f) The claimant's signature.

25 (g) An acknowledgment in the form required by ~~the uniform~~
26 ~~recognition of acknowledgments act, 1969 PA 57, MCL 565.261 to~~
27 ~~565.270, and section 27 of the Michigan notary public act, law on~~
28 **notarial acts**, 2003 PA 238, MCL 55.287.

29 (h) The drafter's name and address.

(i) An address to which the document can be returned.

(j) The name and mailing address of all the owners of the land that are affected by the notice of claim. For purposes of this subdivision, the names and mailing addresses of persons in whose names the land is assessed on the last completed tax assessment roll of the county in which the land is located at the time of recording are the owners of the land.

(2) The following form may be used to record a notice of claim under section 3, although this subsection does not preclude the use of a form that is substantially similar and meets the requirements of this section:

NOTICE

Claimant: _____

Whose address is _____

hereby claims the following described interest: _____

which was originally created by _____, recorded in

liber _____, on page _____, _____ county records, and

affects land located in the _____ of _____,

County of _____, state of Michigan, and more fully

described as:

Commonly known as: _____

Tax item No. _____

The owner(s) of land affected by this notice, for purposes of MCL 565.105(1) (j) is/are:

1 _____
 2 whose address(es) is/are: _____
 3 _____

4 _____ <<Claimant>>

5 STATE OF _____)
 6 _____) SS.
 7 COUNTY OF _____)

8 This instrument was acknowledged before me on ____20____, by
 9 <<Claimant>>

10 _____
 11 _____, Notary Public
 12 _____ County, Michigan

13 My Commission expires: _____
 14 Acting in _____ County, Michigan

15 Drafted by: _____ Return to:

16 _____
 17 _____
 18 _____

19 (3) ~~(2)~~—A notice of claim under section 3 must be ~~filed for~~
 20 ~~record~~**recorded** in the register of deeds office of the county or
 21 counties where the land described in the notice is located. The
 22 register of deeds of each county shall accept all notices of claim
 23 under section 3 that are presented to the register of deeds that
 24 describe land located in the county in which the register of deeds
 25 serves and shall enter and record full copies of the notices in the
 26 same way that deeds and other instruments are recorded.

27 (4) ~~(3)~~—A register of deeds is entitled to charge the same
 28 fees for the recording of a notice under section 3 as are charged
 29 for recording deeds. In indexing notices under section 3, a

1 register of deeds shall enter the notices under the grantee indexes
2 of deeds under the names of the claimants **appearing in the notices,**
3 **and the grantor indexes under the names of the owners of the land**
4 **appearing in the notices.**

5 Sec. 5a. (1) A deed that conveys land or warrants title to
6 land subject to an interest, claim, or charge or a mortgage that
7 encumbers land or warrants title to land subject to an interest,
8 claim, or charge is not an effective notice of claim of an
9 interest, claim, or charge in the land for purposes of section 2 or
10 3 if the deed or mortgage states that the reference to the
11 interest, claim, or charge is for the sole purpose of limiting the
12 warranty in the instrument and does not create, preserve, or
13 continue the interest, claim, or charge under this act. The
14 inclusion of the following statement in the deed or mortgage is
15 sufficient to preclude the creation, preservation, or continuation
16 of an interest, claim, or charge in the land, although this
17 subsection does not preclude the use of a statement that is
18 substantially similar to the statement under this section:

19 "The references to the exceptions to title by liber and page
20 in this instrument are for the sole purpose of limiting the
21 warranty or covenant of title, as applicable, in this instrument
22 and do not create, preserve, or continue the interest, claim, or
23 charge under 1945 PA 200, MCL 565.101 to 565.108".

24 (2) A statement in a deed recorded with the office of the
25 register of deeds of the county in which the land is located that
26 includes a statement that an interest is conveyed "subject to
27 easements and restrictions of record" or a substantially similar
28 language, without reference to any liber and page, is not effective
29 to create, preserve, or continue any recorded easements or

1 **restrictions of record for purposes of section 2 or 3.**

2 Sec. 8. ~~No~~**A** person shall **not** use the privilege of ~~filing~~
3 **recording** notices ~~hereunder~~**under this act** for the purpose of
4 slandering the title to land, and in any action brought for the
5 purpose of quieting title to land. ~~, if~~**If** the court ~~shall find~~
6 **finds** that any person has filed a claim ~~for that reason only, he~~
7 **solely for the purpose of slandering the title to land, the court**
8 shall award the plaintiff all the costs ~~of such~~**incurred as a**
9 **result of the** action, including ~~such~~ attorney fees as the court may
10 allow, ~~to the plaintiff,~~ and in addition, **the court** shall ~~decree~~
11 ~~that order~~ the defendant asserting ~~such~~**the** claim ~~shall to~~ pay to
12 **the** plaintiff all damages that **the** plaintiff may have sustained as
13 the result of ~~such~~**the recording of the** notice of claim. ~~having~~
14 ~~been so filed for record.~~