Legislative Analysis

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MARKETABLE RECORD TITLE ACT

House Bill 4524 (H-1) as reported from committee
Sponsor: Rep. Douglas Wozniak
House Committee: Judiciary
Complete to 8-13-25

SUMMARY:

House Bill 4524 would amend 1945 PA 200, known as the marketable record title act, to change various requirements and procedures related to *marketable record titles*, which generally refers to an ownership interest in land that can be transferred to a new owner without the likelihood that another person can claim an interest in the property.

Under the act, a ***person*** is considered to possess a marketable record title if that person has the legal capacity to own land in the state and has an unbroken chain of title to an interest in land for 20 years for ***mineral interests*** and 40 years for other interests (the "applicable time period"). In other words, a muniment (i.e., document or record) creating that person's interest has been recorded within the applicable time period, and nothing that would conflict with or deny the person's interest (or purport to divest the interest) has been recorded within the same period.

Person would mean an individual, corporation, limited liability company, partnership, firm, organization, governmental entity, trust, trustee, or other legal entity, including a ***property owners' association***.

Property owners' association would mean either of the following:

- A person, or an unincorporated association with a voting membership that is made up of owners of land or the owners' agents or a combination of the owners of land and the owners' agents, that is either of the following:
  - Responsible for the operation or management of the land.
  - Authorized to enforce a document recorded with the office of the register of deeds of the county where the land is located that subjects the land to any use or other restriction or obligation.
- An association of co-owners as defined in section 3 of the Condominium Act.[1]

Mineral interests means an interest in minerals in any land if the interest in minerals is owned by a person other than the owner of the surface of the land. Mineral interest does not include an interest in oil, gas, sand, gravel, limestone, clay, or marl.

In addition to the changes described below, the bill would newly apply the act to interests filed or recorded in accordance with the Drain Code of 1956 or its predecessor act.[2]

[1] MCL 559.103
[2] MCL 280.1 et seq.

Notice of claim

Subject to certain exceptions (see "Exceptions"), the act extinguishes a claim that may affect the person's property interest if the claim depends on an event or transaction preceding the applicable time period unless the ***claimant*** records a notice of claim by September 29, 2025. The bill would extend the current September 29, 2025, deadline to not later than two years after the effective date of the bill.

> ***Claimant*** would mean a person that holds an interest, claim, or charge on land and records a notice of claim under section 3 of the act with the office of the register of deeds of the county where that land is located.[3]

The bill would provide for a standardized form that could be used to record a notice of claim, but would also allow for the use of a form that is substantially similar and meets all applicable requirements. The name and mailing address of all the owners of the land being claimed would also have to be included in the notice of claim, based on the names and mailing addresses of persons in whose names the land is assessed on the last completed tax assessment roll of the county where the land is located.

Unless an interest is excepted under section 4 of the act, the bill would stipulate that any interest, claim, or charge that became void and of no effect before March 29, 2019, **or** that expires or terminates based on its own terms, is not effective and is not preserved by recording a notice of claim.

The bill also would newly allow for any person acting on behalf of a claimant as an agent (or as otherwise authorized in writing) or a property owners' association to file a notice of claim. Under the bill, the recording of the notice would be considered an effective notice for all other persons whose rights originate from the same instrument as the claimant's.

A claimant who satisfies the notice requirements described above would be considered to have properly "preserved" their claim.

Exceptions

The bill would modify the list of exceptions to the types of interests that the act can be used to bar or extinguish.[4] Currently, the act cannot be used to "bar or extinguish an easement or interest in the nature of an easement, the existence of which is clearly observable *by physical evidences of its use*." The bill would eliminate the italicized portion of that provision.

The act also cannot be used to 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) due to a failure to file a notice of claim if the existence of the easement or interest is evidenced by the operation, construction, maintenance, improvement, removal, replacement, or protection of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility (regardless of whether or not the existence of the facility can be observed).

[3] MCL 565.103

[4] The full list of exceptions can be found in MCL 565.104.

The bill would newly allow for an excepted easement to be for the installation or repair of any of the above-listed physical facilities, as well as add the following to the list of excepted easements:

- A driveway.
- A trailway.
- A drain.
- A substation.
- An electric generation facility.
- An energy storage facility or other energy facility.
- A stormwater or drainage facility.

The bill would further provide that the act cannot be used to bar or extinguish any land or resource use restriction if the restrictive covenant or other recorded instrument restricts the use of property for the protection of health or safety from the environmental condition of the property. Currently, the act only covers restrictive covenants or recorded instruments that specifically cite a state or federal environmental statute; the proposed language would provide for a more inclusive exception.

The bill would also create new exceptions that would prevent the act from being used to bar or extinguish any of the following:

- The rights of any *remainderman* (a person who stands to inherit property) on the expiration of any life estate or trust.
- Any interest created by any declaration, instrument, or agreement executed and recorded on or after January 1, 1950 (as amended, if applicable), that subjects the land to any use or other restriction or obligation, burden, or benefit with respect to each lot or other parcel of land that is the subject of the declaration, instrument, or agreement.
- Any interest created by a recorded master deed (or any recorded amendments thereof) for a condominium.

Under the bill, the act could not be used to create, preserve, or continue any unlawful restrictions based on race, color, religion, sex, handicap, familial status, or national origin.

In addition, the act does not affect the rights, titles, or interests in land owned by the United States, Michigan, or any department, commission, or political subdivision of this state. The bill would newly include state agencies and authorities, lake level assessment districts, and drainage districts in this general exception.

<u>Generic claims and interests</u>

As currently constructed, the act theoretically allows ownership to be challenged based on an instrument that makes only generic reference to property interests (i.e., lacks reference to specific liber and page or other county-assigned unique identifying number), implicitly treating the instrument itself as a notice of claim. The bill would stipulate that any of the following would *not* be effective to create, preserve, or continue any interest, claim, or charge under the act:

- An instrument recorded after March 28, 2019, with the office of the register of deeds that includes a statement that an interest is conveyed "subject to easements and restrictions of record" (or substantially similar language).

- An instrument that conveys or encumbers land or warrants title to land subject to an interest, claim, or charge that includes a statement that the reference to the interest, claim, or charge is for the sole purpose of limiting the warranty in the instrument.

Finally, the bill would allow for the inclusion of the following statement (or one that is substantially similar) in an instrument to preclude the creation, preservation, or continuation of an interest, claim, or charge in the land: "The references to the exceptions to title by liber and page or other county-assigned unique identifying number in this instrument are for the sole purpose of limiting the warranty or covenant of title, as applicable, in this instrument and do not create, preserve, or continue the interest, claim, or charge under 1945 PA 200, MCL 565.101 to 565.108."

MCL 565.101 et seq.

FISCAL IMPACT:

House Bill 4524 would have no direct fiscal impact on the state and minimal administrative impacts to certain county offices of the register of deeds. Any costs to counties would be related to implementing the newly required form to record a notice of claims, if needed.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-11-25):

- D'Agnostini Companies
- Real Property Law Section of the State Bar of Michigan

The following entities indicated support for the bill:

- Community Association Institute Michigan Chapter (6-11-25)
- Home Builders Association (6-25-25)
- Michigan Commercial Real Estate Development (6-11-25)
- Michigan Realtors (6-11-25)

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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.