

Legislative Analysis



MODIFY CONVEYANCE AFFIDAVIT & INDEXING REQUIREMENTS

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House Bill 4638 (Substitute H-3)
House Bill 4640 (Substitute H-4)
Sponsor: Rep. Peter Pettalia

House Bill 4639 without amendment
Sponsor: Rep. Marilyn Lane

Committee: Local Government
Complete to 2-25-13

A SUMMARY OF HOUSE BILLS 4638 (H-3), 4640 (H-4) AND 4639 AS REPORTED FROM COMMITTEE

The bills would amend various acts to modify the rules under which real estate conveyances and affidavits are recorded and indexed with the county register of deeds.

House Bills 4638 (H-3) and 4640 (H-4) are tie-barred so that neither could go into effect unless the other also was enacted into law. Further, House Bill 4639 is tie-barred to both House Bill 4638 (H-3) and House Bill 4640 (H-4), so that it could not go into effect unless both of those bills were also enacted into law. A description of each bill follows.

House Bill 4640 (H-4)

The bill would amend Public Act 123 of 1915, which provides for the recording of affidavits affecting real property (MCL 565.451a). Under that act, an affidavit stating facts relating to certain specified matters that could affect the title to real property and made by any person with knowledge of those facts and competent to testify about those facts in open court can be recorded in the office of the Register of Deeds in the county where the property is located.

The bill would add to the list of "matters" so as to include "knowledge of a person with respect to an unrecorded mortgage instrument, if the affidavit recites the names of the parties to the unrecorded mortgage instrument and is accompanied by a copy of the unrecorded mortgage instrument."

Further, the bill requires that the affidavit be indexed under the name of the affiant, and also under the names of the parties to the mortgage instrument.

The bill specifies that this subdivision of the law would apply to any affidavit regarding a mortgage instrument within its scope, even if the affidavit was recorded before the effective date of this legislation. (That is to say, the bill would apply retroactively.) The bill further specifies, however, that a copy of an unrecorded mortgage instrument and affidavit would not be received and recorded by the register of deeds after the effective

date of this legislation unless the affidavit and the copy of the mortgage instrument were legible, and the affidavit stated all of the following:

- the names of the mortgagor and mortgagee;
- a legal description of the property, the property tax identification number, and, if applicable, the address of the property;
- that the original mortgage instrument has been lost or destroyed;
- that the original mortgage instrument was signed by the parties to the unrecorded mortgage instrument;
- that, to the best of the affiant's knowledge, the original mortgage instrument was delivered from the mortgagor to the mortgagee; and
- that the affiant did one of the following: (1) mailed a copy of the affidavit and unrecorded mortgage instrument by first-class certified mail to the mortgagor at the mortgagor's address last known to the affiant; or (2) personally served a copy of the affidavit and unrecorded mortgage instrument on the mortgagor.

House Bill 4638 (H-3)

The bill would amend Public Act 103 of 1937, which concerns the documents filed with the office of the register of deeds (MCL 565.201). It specifies that if a mortgage instrument met all other requirements under the act, and a copy of the mortgage instrument was affixed to an affidavit that met the requirements of Public Act 123 of 1915, then the affidavit with the accompanying copy of the mortgage instrument would have to be received for record by the register of deeds, and duly recorded as of the date of recording of the affidavit.

The bill also specifies that to the extent the mortgage instrument validly creates a lien, the lien is perfected as of the date of recording of the affidavit.

Finally, the bill specifies that this legislation, if enacted into law, would apply retroactively to all copies of mortgage instruments verified by affidavit, regardless of whether they were recorded on, before, or after the effective date of this legislation. However, the bill clarifies that an affidavit and mortgage instrument would not be received for record on or after the effective date of this legislation, if more than one mortgage instrument was attached to the affidavit.

House Bill 4639

The bill would amend RS 65 of 1846, which concerns the recording of conveyances (MCL 565.28). The act requires that the names of all parties be included in a computerized index to allow for an alphabetical search of the names of each party to each instrument recorded by the register of deeds. The bill would allow an exception so that it would not apply to an instrument cited in Section 1a(g) of Public Act 123 of 1915, which is the new section of the law that is proposed by House Bill 4640.

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

The Michigan Land Title Association supports the bills. (2-13-14)

The Michigan Credit Union League supports the bills. (2-13-14)

The Michigan Bankers Association supports the bills. (2-13-14)

The Michigan Association of Realtors supports the bills. (6-6-13)

The Real Property Law Section of the Michigan State Bar Association supports the bills.
(6-6-13)

The Michigan Association of Registers of Deeds (MARD) opposes the bills. (2-13-14)

Branch County opposes the bills. (2-13-14)

Legislative Analyst: J. Hunault

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