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House Bill 4638 (Substitute H-3 as passed by the House)
House Bill 4639 (as passed by the House)
House Bill 4640 (Substitute H-4 as passed by the House)
Sponsor: Representative Peter Pettalia (H.B. 4638 & 4640)
Representative Marilyn Lane (H.B. 4639)
House Committee: Local Government
Senate Committee: Banking and Financial Institutions

Date Completed: 5-7-14

CONTENT

House Bill 4640 (H-4) would amend Public Act 123 of 1915, which provides for the recording and use of affidavits affecting real property, to do the following:

- Allow the recording of an affidavit stating facts related to an unrecorded mortgage instrument, if a copy of that instrument also were recorded.
- Require such an affidavit filed on or after the bill's effective date to state that the original mortgage had been lost or destroyed, and contain additional statements and information.

House Bill 4638 (H-3) would amend Public Act 103 of 1937, which prescribes conditions relative to the execution of instruments to be recorded with the register of deeds, to do the following:

- Allow an affidavit that met the requirements proposed by House Bill 4640 (H-4) to be recorded with a mortgage instrument.
- Provide that, to the extent the mortgage created a lien, the lien would be perfected on the date the affidavit was recorded.

House Bill 4639 would amend Chapter 65 of the Revised Statutes of 1846, which pertains to the recording of conveyances and canceling of mortgages, to make an exception to the indexing requirements for alphabetical searches, for a person described in House Bill 4640 (H-4).

House Bills 4638 (H-3) and 4640 (H-4) are tie-barred to each other. House Bill 4639 is tie-barred to House Bills 4638 and 4640.

House Bill 4640 (H-4)

Public Act 123 of 1915 allows an affidavit stating facts relating to certain matters that may affect the title to real property and made by a person who has knowledge of those facts or is competent to testify concerning those facts in open court, to be recorded in the office of the register of deeds in the county where the property is located. The matters that may be addressed in such an affidavit include the following:

- Birth, age, sex, marital status, death, name, residence, identity, capacity, relationship, family history, and service in the armed forces of parties named in deeds, wills, mortgages, and other instruments affecting real property.
- Knowledge of the occurrence of any condition or event that could terminate an estate or interest in real property.
- Knowledge of the purchaser of real property sold upon foreclosure or conveyed in lieu of foreclosure of a trust mortgage or deed of trust securing an issue of indebtedness, or of any mortgage, land contract, or other security interest held by a fiduciary or representative, as to the authority of the purchaser to purchase the real property and the terms and conditions upon which it is to be held and disposed of.

The bill also would allow an affidavit stating facts related to the knowledge of a person with respect to an unrecorded mortgage instrument to be recorded if the affidavit recited the names of the parties to that instrument and a copy of it accompanied the affidavit. The affidavit would have to be indexed under the name of the affiant and under the names of the parties to the mortgage.

The proposed provision would apply to any affidavit regarding a mortgage within its scope, and would apply even if the affidavit were recorded before the bill's effective date. However, a copy of an unrecorded mortgage instrument and affidavit could not be received and recorded on or after that date 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 the 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 had 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.
- That the affiant either mailed a copy of the affidavit and unrecorded mortgage instrument by first-class certified mail to the mortgagor at the mortgagor's last known address, or personally served a copy of those documents on the mortgagor.

House Bill 4638 (H-3)

Under Public Act 103 of 1937, an instrument that conveys, assigns, or encumbers title to, or an interest in, real property may not be received for recording by the register of deeds of any county unless it complies with specific requirements regarding the name of the person executing the instrument, the name of the notary public who signed it, and the address of each grantee in each deed of conveyance or assignment of real estate, as well as a requirement that the first five digits of any Social Security number appearing in or on the instrument be obscured or removed.

The bill specifies that if a mortgage instrument all of met the requirements for recording under the Act, and an affidavit met the requirements of Section 1a(g) of Public Act 123 of 1915, then the affidavit and the mortgage instrument would have to be received for recording by the register of deeds and would be considered recorded on the date the affidavit was recorded. (Section 1a(g) contains the language proposed by House Bill 4640 (H-4).)

To the extent that the mortgage instrument validly created a lien, the lien would be perfected on the date the affidavit was recorded.

The bill would apply retroactively to all copies of mortgage instruments verified by affidavit, regardless of whether they were recorded before, on, or after the bill's effective date. An affidavit and mortgage instrument could not be received for recording on or after that date, however, if more than one mortgage instrument were attached to the affidavit.

House Bill 4639

A register of deeds is required to keep an index of the instruments it has accepted for recording. The index may be computerized or in book form, or a combination of both, and must include specified information.

A computerized index also must be maintained to allow an alphabetical search of the names of each party to each instrument recorded by the register of deeds. The bill would create an exception to this requirement for a person described in Section 1a(g) of Public Act 123 of 1915. (As noted above, an affidavit recorded under House Bill 4640 (H-4) would have to be indexed under the name of the affiant and the names of the parties to the mortgage.)

MCL 565.201 (H.B. 4638)
565.28 (H.B. 4639)
565.451a (H.B. 4640)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have a minimal fiscal impact on local government and no fiscal impact on the State. If previously unrecorded mortgages were recorded with affidavits pursuant to the bills, procedures at the local register of deeds offices would be modified somewhat to determine whether the new affidavit and mortgage met the requirements of the bills, including that the affidavit and unrecorded mortgage had been sent to the mortgagor by certified mail, or that the mortgagor had personally served a copy of the affidavit and unrecorded mortgage instrument on the mortgagor, and to record and index the records as required. If the bills resulted in increased filings, local registers of deeds would receive the document recording fee of \$14 for the first page (of which \$4 goes to the State Survey and Remonumentation Fund for grants to counties for remonumentation) and \$3 for each subsequent page of the document recorded.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.