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BILL ANALYSIS



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House Bill 5362 (Substitute H-2 as passed by the House)
House Bill 5398 (Substitute H-4 as passed by the House)
Sponsor: Representative Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-10-18

CONTENT

House Bill 5362 (H-2) would amend the Michigan Trust Code (MTC) to modify the information required to be in a certificate of trust.

House Bill 5398 (H-4) would amend Public Act 133 of 1991, which pertains to the use and recording of certain documents regarding trusts in the case of conveyed real property, to do the following:

- Refer to a "trust instrument", instead of a "trust agreement".
- Refer to a "certificate of trust", instead of a "certificate of trust existence and authority".
- Require a certificate of trust to be recorded as a separate document it accompanied an instrument that conveys, encumbers, or otherwise affects real property.

The bill also would repeal Sections 2, 3, and 6 of the Public Act 133. (Those sections pertain to certificates of trust existence and authority, the execution of a certificate of trust existence and authority, and indexing a certificate of trust existence and authority, respectively.)

House Bill 5362 (H-2)

Under the Michigan Trust Code, instead of giving a copy of a trust instrument to a person other than a trust beneficiary, a trustee may give to the person a certificate of trust that must include all of the following information:

- The name of the trust and the date of the trust instrument, and any amendments.
- The name and address of the currently acting trustee.
- The powers of the trustee relating to the purposes for which the certificate is being offered.
- The revocability or irrevocability of the trust and identity of any person holding a power to revoke it.
- The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required to exercise powers of the trustee.

The bill, instead, would require a certificate of trust to include all of the following information:

- The name of the trust, the date of the trust instrument, and the date of each operative trust instrument.
- The name and address of each current trustee.
- The powers of the trustee relating to the purposes for which the certificate of trust was being offered.
- The revocability or irrevocability of the trust and identity of any person holding a power to revoke it.
- The authority of cotrustees to sign on behalf of the trust or otherwise authenticate on behalf of the trust and whether all of less than all of the cotrustees are required to exercise powers of the trustee.

The MTC also allows a recipient of a certificate of trust to require the trustee to give copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer on him or her the power to act in the pending transaction. Under the bill, a recipient of a certificate of trust could require the trustee to give copies of those excerpts from *each* trust instrument that designated the trustee and conferred on him or her the power to act in the pending transaction.

House Bill 5398 (H-4)

Trust Instrument, Certificate of Trust

Under Public Act 133, an instrument that conveys, encumbers, or otherwise affects real property, executed pursuant to an express trust, may be accompanied by either a copy of the trust agreement or by a certificate of trust existence and authority.

A trust or certificate of trust existence and authority that accompanies an instrument that conveys, encumbers, or otherwise affects real property, and any amendments to or revocations of the trust agreement or the certificate of trust existence and authority, may be recorded in the office of the register of deeds of each county where the lands that are the subject of or affected by the trust agreement are located. If a trust agreement accompanies an instrument, the trust agreement must be recorded as a separate document.

A purchaser or other party relying upon the information contained in a recorded certificate of trust existence and authority shall be afforded the same protection as is provided to a subsequent purchaser in good faith under Section 29 of the Revised Statutes of 1846, and must not be required to further examine the trust agreement, unless an instrument amending or revoking the trust agreement or certificate of trust existence and authority is recorded in the same office in which the trust agreement or certificate of trust existence and authority was recorded. (Under Section 29, a conveyance of real estate that is not recorded as provided in Chapter 65 of the Revised Statutes of 1846 is void against any subsequent purchaser in good faith and for valuable consideration of the same real estate who conveyance is properly recorded.)

Instead of trust agreement, the bill would refer to "trust instrument", as that term is defined in Section 7103 of the Estates and Protected Individuals Code (a governing instrument that contains the terms of the trust, including any amendment to a term of the trust). Also, instead of trust existence and authority, the bill would refer to a certificate of trust under Section 7913 of the Estates and Protected Individuals Code (which House Bill 5362 (H-2) would amend).

Additionally, under the bill, if a trust agreement or *certificate of trust* accompanied an instrument that conveys, encumbers, or otherwise affects real property, the trust instrument or certificate of trust would have to be recorded as a separate document.

Repealed Sections

The bill would repeal Sections 2, 3, and 6 of the Act.

Section 2 of Public Act 133 requires that a certificate of trust existence and authority contain certain information, including verbatim reproductions of provisions of the trust agreement, and any amendments to the trust agreement, regarding all of the following:

- The powers of the trustee or trustees relating to the trust relating to real property or any interest in real property, and restrictions on the powers of the trustee or trustees relating to real property or any interest in real property.
- The governing law
- Amendment of the trust relating to trust provisions described above.

Section 3 of the Act requires a certificate of trust existence and authority to be executed by the settlor or grantor; an attorney for the settlor, grantor, or trustee, or an officer of a banking institution or an attorney if then acting as a trustee. The certificate must be in the form of an affidavit.

Section 6 of the Act requires that the certificate of trust existence and authority, in addition to being indexed in any other manner required by law, must be indexed in the records of the office of the register of deeds under the title of the trust.

MCL 700.7913 (H.B. 5362)
565.431 et al. (H.B. 5398)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Abbey Frazier

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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.