



**House  
Legislative  
Analysis  
Section**

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**LAND CONTRACT ACT: DEFINE  
'REAL ESTATE MORTGAGE'**

**House Bill 5328 as introduced  
First Analysis (2-6-02)**

**Sponsor: Rep. Michael Bishop  
Committee: Commerce**

***THE APPARENT PROBLEM:***

The Land Contract Act was amended by Public Act 106 of 1998 (House Bill 5282) to allow the creation, recording, and enforcement of a mortgage granted against a land contract in generally the same fashion as allowed for real estate mortgages. The act, generally speaking, allows either a buyer or a seller of property under a land contract to execute a land contract mortgage to secure any debt or obligation that can be secured under a real estate mortgage. This provided a means for either party to a land contract to use the equity in a land contract as a security interest. The authors of Public Act 106 say the act contains a definition of the term "real estate mortgage" that is narrower than intended and they have recommended the adoption of a technical amendment that would conform with their original intent.

***THE CONTENT OF THE BILL:***

The bill would rewrite the definition of "real estate mortgage" found in the Land Contract Act.

Currently, "real estate mortgage" is defined as a mortgage granted on interest in real property, which is created when the vendor (seller) and the vendee (buyer) join in or subject their respective interests to a single mortgage. The act specifies that a land contract mortgage is not a real estate mortgage. House Bill 5328 would amend the act so that a "real estate mortgage" would be defined as a mortgage granted upon an interest in real property, other than a mortgage upon a vendor's or a vendee's interest in a land contract unless the vendor and the vendee join in or subject their respective interests to a single mortgage. The underlined language would be the new language added. The definition would continue to say that a land contract mortgage is not a real estate mortgage.

MCL 565.356

***BACKGROUND INFORMATION:***

A land contract is an installment contract for the purchase and sale of land under which the seller or vendor retains legal title to the property pending payment of the final installment, at which time the title is transferred to the purchaser or vendee. Under a land contract, the purchaser has the right to possession and the right to receive rent from tenants. The underlying act addressing land contract mortgages is described in the analysis of House Bill 5282 of the 1997-98 legislative session by the House Legislative Analysis Section, dated 8-11-98.

***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill would have no fiscal impact. (HFA fiscal note dated 1-29-02)

***ARGUMENTS:***

***For:***

Proponents say that the bill provides a technical correction to provisions put in statute in 1998 so as to make the definition of the term "real estate mortgage" in the definitions section of the statute conform to the way the term is used throughout the statute. The authors of the 1998 statute, from the Real Property Law Section of the State Bar of Michigan, say the term is meant to apply to "every day, run of the mill, mortgages" as understood in the common law and was not intended to create a more narrow definition, which it appears to have done.

***POSITIONS:***

The Real Property Law Section of the State Bar of Michigan supports the bill. (2-5-02)

Analyst: C. Couch

■ 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.