

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5282

(As passed the House, April 2, 1998)

A bill to amend 1879 PA 237, entitled
"An act to provide for the execution, acknowledgment, and recording of contracts for the sale of land,"
(MCL 565.351 to 565.355) by adding sections 6, 7, 8, 9, 10, and 11; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 6. AS USED IN THIS ACT:

2 (A) "ASSIGNEE" MEANS ASSIGNEE OF THE VENDOR NAMED IN A LAND
3 CONTRACT, A SUCCEEDING ASSIGNEE, OR A LAND CONTRACT MORTGAGEE WHO
4 BECAME THE ABSOLUTE HOLDER OF THE LAND CONTRACT AS A RESULT OF
5 SECURITY ENFORCEMENT PROCEDURES.

6 (B) "GRANTEE" MEANS GRANTEE OF THE VENDOR NAMED IN A LAND
7 CONTRACT, A SUCCEEDING GRANTEE, OR A GRANTEE PURSUANT TO A MORT-
8 GAGE FORECLOSURE OF A MORTGAGE UPON THE LAND BUT SUBORDINATE TO
9 THE LAND CONTRACT.

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1 (C) "LAND CONTRACT MORTGAGE" MEANS A MORTGAGE GRANTED BY A
2 VENDOR OR A VENDEE.

3 (D) "LAND CONTRACT MORTGAGEE" MEANS THE HOLDER OF A LAND
4 CONTRACT MORTGAGE GRANTED BY A VENDOR OR VENDEE, OR HIS OR HER
5 HEIRS, SUCCESSORS, OR ASSIGNS.

6 (E) "NONMORTGAGING VENDEE" MEANS A VENDEE WHO HAS NOT
7 ENTERED INTO A LAND CONTRACT MORTGAGE GRANTED BY HIS OR HER
8 VENDOR.

9 (F) "NONMORTGAGING VENDOR" MEANS A VENDOR WHO HAS NOT
10 ENTERED INTO A LAND CONTRACT MORTGAGE GRANTED BY HIS OR HER
11 VENDEE.

12 (G) "REAL ESTATE MORTGAGE" MEANS A MORTGAGE GRANTED UPON AN
13 INTEREST IN REAL PROPERTY, WHICH IS CREATED WHEN THE VENDOR AND
14 THE VENDEE JOIN IN OR SUBJECT THEIR RESPECTIVE INTERESTS TO A
15 SINGLE MORTGAGE. A LAND CONTRACT MORTGAGE IS NOT A REAL ESTATE
16 MORTGAGE.

17 (H) "THIRD PARTIES" MEANS PERSONS OR ENTITIES OTHER THAN THE
18 VENDOR, VENDEE, NONMORTGAGING VENDOR, NONMORTGAGING VENDEE,
19 ASSIGNEE, GRANTEE, OR LAND CONTRACT MORTGAGEE, WHO HAVE OR CLAIM
20 AN INTEREST IN OR ENCUMBRANCE UPON REAL PROPERTY OR A VENDOR'S OR
21 VENDEE'S INTEREST WHICH IS SUBJECT TO A LAND CONTRACT MORTGAGE.

22 (I) "VENDEE" MEANS THE VENDEE NAMED IN THE LAND CONTRACT AND
23 THE VENDEE'S HEIRS, SUCCESSORS, OR ASSIGNS.

24 (J) "VENDOR" MEANS THE VENDOR NAMED IN THE LAND CONTRACT AND
25 THE VENDOR'S HEIRS, SUCCESSORS, OR ASSIGNS.

26 SEC. 7. (1) A VENDOR OR A VENDEE UNDER A LAND CONTRACT MAY
27 GRANT A LAND CONTRACT MORTGAGE TO SECURE ANY DEBT OR OBLIGATION

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1 THAT MAY BE SECURED BY A REAL ESTATE MORTGAGE. THIS SUBSECTION
2 DOES NOT ALTER THE EFFECT OF ANY CONTRACTUAL PROVISIONS WHICH
3 PROHIBIT OR RESULT IN A DEFAULT UPON THE MORTGAGE, SALE, ASSIGN-
4 MENT, OR FURTHER ENCUMBRANCE OF A VENDOR'S OR VENDEE'S INTEREST
5 IN A LAND CONTRACT WHICH WOULD OTHERWISE BE ENFORCEABLE.

6 (2) FOR THE PURPOSES OF SECTIONS 6 TO 11, THE RESPECTIVE
7 INTERESTS OF A VENDOR OR A VENDEE SUBJECT TO A LAND CONTRACT
8 MORTGAGE INCLUDES ALL OF THE RESPECTIVE RIGHTS OF A VENDOR OR
9 VENDEE INCLUDING, WITHOUT LIMITATION, THE VENDOR'S RIGHTS TO PAY-
10 MENTS AND THE VENDEE'S RIGHTS TO CONVEYANCE. FOR THE PURPOSES OF
11 SECTIONS 6 TO 11, THE INTERESTS OF VENDORS AND VENDEES SUBJECT TO
12 A LAND CONTRACT MORTGAGE ARE REAL PROPERTY INTERESTS.

13 (3) UNLESS OTHERWISE PROVIDED BY THE PARTIES, A LAND CON-
14 TRACT MORTGAGE ENCUMBERS ALL OF THE VENDOR'S OR VENDEE'S INTER-
15 ESTS THAT ARE MORTGAGED, WHETHER REAL, PERSONAL, OR MIXED, IN THE
16 SAME MANNER AND TO THE SAME EXTENT AS A REAL ESTATE MORTGAGE.

17 (4) THIS ACT DOES NOT APPLY TO REAL ESTATE MORTGAGES UNLESS
18 THE PARTIES OTHERWISE AGREE.

19 (5) THIS ACT IS IN ADDITION TO EXISTING RIGHTS AND REMEDIES
20 AT LAW WITH RESPECT TO THE FINANCING AND ENCUMBERING OF THE
21 VENDOR'S AND VENDEE'S INTERESTS IN LAND CONTRACTS.

22 SEC. 8. (1) ANY DOCUMENT THAT WOULD BE SUFFICIENT TO CON-
23 STITUTE A REAL ESTATE MORTGAGE UPON AN INTEREST IN REAL PROPERTY
24 SHALL CONSTITUTE A LAND CONTRACT MORTGAGE UPON THE VENDOR'S OR
25 VENDEE'S INTEREST.

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1 (2) A LAND CONTRACT MORTGAGE SHALL BE IN A FORM AND SHALL BE
2 EXECUTED, ACKNOWLEDGED, AND RECORDED IN THE SAME MANNER AS
3 PROVIDED FOR REAL ESTATE MORTGAGES.

4 (3) A LAND CONTRACT MORTGAGE NEED NOT SPECIFICALLY IDENTIFY
5 THE INTEREST ENCUMBERED AS A VENDOR'S OR VENDEE'S INTEREST.

6 (4) A LAND CONTRACT MORTGAGE THAT IS RECORDED IN THE MANNER
7 PROVIDED FOR REAL ESTATE MORTGAGES IS PERFECTED FOR ALL PURPOSES,
8 WITHOUT FILING, UNDER THE UNIFORM COMMERCIAL CODE, 1962 PA 172,
9 MCL 440.1101 TO 440.11102, ANY NOTICE TO THE NONMORTGAGING VENDOR
10 OR THE NONMORTGAGING VENDEE OR THE TAKING OF POSSESSION OF THE
11 ORIGINAL LAND CONTRACT DOCUMENT OR OTHERWISE. A LAND CONTRACT
12 MORTGAGE PERFECTED IN ACCORDANCE WITH THIS SECTION TAKES PRIORITY
13 AS A MATTER OF LAW OVER ALL OTHER MORTGAGES, LIENS, SECURITY, OR
14 OTHER INTERESTS IN SUCH VENDOR'S OR VENDEE'S INTERESTS EXCEPT
15 THOSE AS TO WHICH A REAL ESTATE MORTGAGE WOULD BE SUBORDINATE.

16 SEC. 9. (1) A LAND CONTRACT MORTGAGE MAY BE ENFORCED IN
17 ACCORDANCE WITH ANY EXISTING PROCEDURE FOR THE ENFORCEMENT OF A
18 REAL ESTATE MORTGAGE, INCLUDING, WITHOUT LIMITATION, FORECLOSURE
19 BY ADVERTISEMENT AND JUDICIAL FORECLOSURE. UPON COMPLETION OF A
20 FORECLOSURE BY ADVERTISEMENT OR JUDICIAL FORECLOSURE OF A LAND
21 CONTRACT MORTGAGE AND THE EXPIRATION OF THE APPLICABLE REDEMPTION
22 PERIOD, THE SUCCESSFUL BIDDER AT FORECLOSURE SHALL SUCCEED TO ALL
23 OF THE MORTGAGED INTERESTS OF THE RESPECTIVE FORECLOSED VENDOR OR
24 VENDEE.

25 (2) OTHER RIGHTS AND REMEDIES THAT MAY BE AVAILABLE TO A
26 REAL ESTATE MORTGAGEE, INCLUDING, WITHOUT LIMITATION, FUTURE

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1 ADVANCE MORTGAGES, ASSIGNMENTS OF RENTS, OR RECEIVERSHIPS MAY, IN
2 A PROPER CASE, BE APPLIED IN FAVOR OF A LAND CONTRACT MORTGAGEE.

3 (3) ALL REMEDIES THAT EXISTED BEFORE THE EFFECTIVE DATE OF
4 SECTIONS 6 TO 11 SHALL CONTINUE TO APPLY. HOWEVER, A LAND CON-
5 TRACT MORTGAGE MADE PURSUANT TO THIS ACT MAY, AT THE OPTION OF
6 THE LAND CONTRACT MORTGAGEE, ALSO BE ENFORCED AS PROVIDED IN THIS
7 ACT.

8 SEC. 10. (1) A LAND CONTRACT MORTGAGE SHALL NOT, ABSENT
9 VOLUNTARY SUBORDINATION AS PROVIDED BY LAW, ENCUMBER OR OTHERWISE
10 AFFECT THE RIGHTS OR REMEDIES OF THE NONMORTGAGING VENDOR OR THE
11 NONMORTGAGING VENDEE EXCEPT AS OTHERWISE PROVIDED IN
12 SUBSECTION (2) OR (3).

13 (2) IF THE VENDEE'S INTEREST IS ENCUMBERED BY A RECORDED
14 LAND CONTRACT MORTGAGE, THE NONMORTGAGING VENDOR SHALL DO ALL OF
15 THE FOLLOWING:

16 (A) PROVIDE THE SAME NOTICES WITH RESPECT TO THE REMEDIES OF
17 FORFEITURE AND FORECLOSURE TO THE LAND CONTRACT MORTGAGEE AS ARE
18 REQUIRED TO BE PROVIDED TO THE VENDEE.

19 (B) NAME THE LAND CONTRACT MORTGAGEE AS A PARTY IN INTEREST
20 IN ANY LEGAL PROCEEDING, THE EFFECT OF WHICH WOULD BE TO TERMI-
21 NATE THE VENDEE'S INTEREST, AND THUS THE LAND CONTRACT
22 MORTGAGEE'S LIEN.

23 (C) ACCEPT FROM THE LAND CONTRACT MORTGAGEE ANY CURE OF ANY
24 DEFAULT THAT THE NONMORTGAGING VENDOR WOULD BE OBLIGATED TO
25 ACCEPT FROM THE VENDEE.

26 (3) A NONMORTGAGING VENDEE, WHEN THE VENDOR'S INTEREST HAS
27 BEEN SUBJECTED TO A LAND CONTRACT MORTGAGE, SHALL CONTINUE TO

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1 MAKE PAYMENTS IN ACCORDANCE WITH THE LAND CONTRACT'S TERMS TO THE
2 VENDOR OR ASSIGNEE UNTIL ANY OF THE FOLLOWING OCCUR:

3 (A) NOTICE TO THE VENDEE OF THE COMPLETION OF FORECLOSURE
4 AND THE EXPIRATION, WITHOUT REDEMPTION, OF THE APPLICABLE REDEMP-
5 TION PERIOD WITH RESPECT TO THE LAND CONTRACT MORTGAGE, AFTER
6 WHICH ALL PAYMENTS SHALL BE MADE TO THE SUCCESSFUL BIDDER AT THE
7 FORECLOSURE, OR THE SUCCESSFUL BIDDER'S HEIRS, SUCCESSORS, AND
8 ASSIGNS. HOWEVER, IF THE VENDEE HAS ACTUAL NOTICE OF THE FORE-
9 CLOSURE SALE, INSTALLMENT PAYMENTS SHALL BE MADE DURING THE
10 REDEMPTION PERIOD AS PROVIDED IN SECTION 6058 OF THE REVISED
11 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.6058.

12 (B) IF THE LAND CONTRACT MORTGAGE CONTAINS A COLLATERAL
13 ASSIGNMENT OF THE PAYMENTS OF THE VENDEE UNDER THE LAND CONTRACT,
14 DELIVERY TO THE VENDEE OF A NOTICE OF DEFAULT SIGNED UNDER OATH
15 BY THE LAND CONTRACT MORTGAGEE ASSERTING THAT A DEFAULT EXISTS
16 UNDER THE LAND CONTRACT MORTGAGE TOGETHER WITH A COPY OF THE
17 RECORDED LAND CONTRACT MORTGAGE CONTAINING THE COLLATERAL ASSIGN-
18 MENT AND A DEMAND THAT ALL FURTHER PAYMENTS UNDER THE LAND CON-
19 TRACT BE MADE TO THE LAND CONTRACT MORTGAGEE, AFTER WHICH ALL
20 PAYMENTS SHALL THEREAFTER BE MADE IN ACCORDANCE WITH THAT
21 NOTICE.

22 (4) A THIRD PARTY ASSERTING A PRIOR LIEN OR INTEREST TO THAT
23 OF A LAND CONTRACT MORTGAGEE WHOSE LAND CONTRACT MORTGAGE HAS
24 BEEN RECORDED SHALL DO ALL OF THE FOLLOWING:

25 (A) PROVIDE TO THE LAND CONTRACT MORTGAGEE COPIES OF ALL
26 NOTICES THAT MUST BE PROVIDED TO THE VENDOR OR VENDEE AS A
27 PREREQUISITE TO THE ASSERTION OR ENFORCEMENT OF THE THIRD PARTY

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1 RIGHTS OR REMEDIES, BUT ONLY TO THE EXTENT THAT THOSE NOTICES
2 WOULD BE REQUIRED TO BE PROVIDED IF THE VENDOR OR VENDEE WERE THE
3 FEE OWNER OF THE REAL PROPERTY AND THE LAND CONTRACT MORTGAGE
4 WERE A MORTGAGE UPON THE FEE.

5 (B) NAME THE LAND CONTRACT MORTGAGEE AS A PARTY IN INTEREST
6 IN ANY LEGAL PROCEEDING, THE EFFECT OF WHICH WOULD BE TO TERMI-
7 NATE, ASSERT, OR ENFORCE A PRIOR LIEN OR ENCUMBRANCE UPON THE
8 VENDOR'S OR VENDEE'S INTEREST THAT IS SUBJECT TO THE LAND CON-
9 TRACT MORTGAGE.

10 (C) ACCEPT FROM THE LAND CONTRACT MORTGAGEE ANY PAYMENT,
11 PERFORMANCE, OR CURE THAT THE THIRD PARTY WOULD BE OBLIGATED TO
12 ACCEPT FROM THE VENDOR OR THE VENDEE.

13 SEC. 11. (1) WHEN THE VENDEE NAMED IN A LAND CONTRACT, OR
14 HIS OR HER HEIRS, SUCCESSORS, OR ASSIGNS, HAS FULLY PAID AND PER-
15 FORMED THE OBLIGATIONS UNDER THE CONTRACT THAT ARE A PRECONDITION
16 TO THE SALE AND CONVEYANCE OF THE LAND, THE VENDOR NAMED IN THE
17 CONTRACT SHALL MAKE CONVEYANCE OF THE LAND TO THE VENDEE BY A
18 DEED OF CONVEYANCE AS SPECIFIED IN THE LAND CONTRACT, OR, IF THE
19 FORM OF THE DEED IS NOT SPECIFIED IN THE LAND CONTRACT, BY AN
20 APPROPRIATE DEED. UNTIL THE VENDOR NAMED IN THE CONTRACT HAS
21 CEASED IN LAW TO BE BOUND BY THE PROVISIONS OF THE CONTRACT, THE
22 OBLIGATION TO CONVEY THE LAND REMAINS A CONTINUING EXECUTORY
23 OBLIGATION ON THE PART OF THE VENDOR.

24 (2) THE VENDOR NAMED IN THE LAND CONTRACT WHO HAS ASSIGNED
25 HIS OR HER INTEREST IN THE CONTRACT OR SOLD OR MORTGAGED THE LAND
26 SUBJECT TO THE CONTRACT, WHETHER ABSOLUTELY OR AS COLLATERAL
27 SECURITY, SHALL REMAIN FULLY OBLIGATED TO DELIVER A DEED OF

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1 CONVEYANCE AS PROVIDED IN SUBSECTION (1). HOWEVER, IF THE
2 ASSIGNEE ASSUMED THE CONVEYANCING OBLIGATION OF THE VENDOR, THE
3 ORIGINAL VENDOR IS ONLY SECONDARILY LIABLE FOR THAT OBLIGATION.

4 (3) WHEN THE VENDEE NAMED IN A LAND CONTRACT, OR HIS OR HER
5 HEIRS, SUCCESSORS, OR ASSIGNS, HAS FULLY PAID AND PERFORMED THE
6 OBLIGATIONS THAT ARE A PRECONDITION TO THE SALE AND CONVEYANCE OF
7 THE LAND SUBJECT TO THE CONTRACT, THE ASSIGNEE AND ALL SUCCEEDING
8 ASSIGNEES, INCLUDING THE HOLDER OF A LAND CONTRACT VENDOR'S
9 INTEREST WHO HAS BECOME THE ABSOLUTE HOLDER OF THAT INTEREST AS A
10 RESULT OF SECURITY ENFORCEMENT PROCEDURES AFTER AN ASSIGNMENT OF
11 THE VENDOR'S INTEREST AS COLLATERAL SECURITY, AND THE GRANTEE,
12 AND ALL SUCCEEDING GRANTEES INCLUDING ANY GRANTEE PURSUANT TO A
13 MORTGAGE FORECLOSURE REGARDING A MORTGAGE MADE UPON THE LAND BUT
14 SUBJECT TO THE LAND CONTRACT IN ANY DEED OF THE LAND GIVEN
15 SUBJECT TO THE LAND CONTRACT BY THE VENDOR, SHALL MAKE THE CON-
16 VEYANCE OF THE LAND TO THE VENDEE. THE CONVEYANCE SHALL BE MADE
17 AS SPECIFIED IN THE LAND CONTRACT IF THE VENDOR'S ASSIGNEE OR
18 GRANTEE HAS ASSUMED THE VENDOR'S CONTINUING EXECUTORY CONVEYANC-
19 ING OBLIGATION, OR BY QUITCLAIM DEED IF THE VENDOR'S ASSIGNEE OR
20 GRANTEE HAS NOT ASSUMED THE VENDOR'S CONVEYANCING OBLIGATION.
21 HOWEVER, AN ASSIGNEE NAMED IN THE CONTRACT WHO HAS NOT ASSUMED
22 THE CONVEYANCING OBLIGATION OF THE VENDOR AND WHO HAS REASSIGNED
23 THE ENTIRE VENDOR'S INTEREST AND, THEREFORE, RETAINS NO FURTHER
24 INTEREST, WHETHER ABSOLUTE OR AS SECURITY, HAS NO OBLIGATION TO
25 PROVIDE A DEED OF CONVEYANCE.

26 (4) WHEN THE VENDEE NAMED IN THE LAND CONTRACT, OR HIS OR
27 HER HEIRS, SUCCESSORS, OR ASSIGNS, HAS FULLY PAID AND PERFORMED

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1 THE OBLIGATIONS UNDER THE CONTRACT THAT ARE A PRECONDITION TO THE
2 SALE AND CONVEYANCE OF THE LAND, THE LAND CONTRACT MORTGAGEE
3 UNDER ANY LAND CONTRACT MORTGAGE OF THE LAND MADE BY THE VENDOR
4 SUBJECT TO THE LAND CONTRACT, OR THE ASSIGNEE OF ANY ASSIGNMENT
5 FOR COLLATERAL SECURITY PURPOSES OF THE VENDOR'S INTEREST UNDER
6 THE LAND CONTRACT, SHALL EXECUTE A DISCHARGE OF THE LAND CONTRACT
7 MORTGAGE OR A RELEASE OF THE SECURITY ASSIGNMENT IN THE SAME
8 MANNER AS NOW PROVIDED BY LAW FOR THE DISCHARGE OF MORTGAGES.

9 (5) WHEN THE VENDOR NAMED IN THE LAND CONTRACT HAS CEASED IN
10 LAW TO BE BOUND BY THE PROVISIONS OF THE CONTRACT, AND IS ENTI-
11 TLED TO A RELEASE FROM THE CONTRACT, THE VENDEE NAMED IN THE CON-
12 TRACT, OR HIS OR HER HEIRS, SUCCESSORS, OR ASSIGNS, INCLUDING,
13 WITHOUT LIMITATION, ANY LAND CONTRACT MORTGAGEES OR OTHER PARTIES
14 CLAIMING A LIEN OR SECURITY INTEREST UPON OR IN THE VENDEE'S
15 INTERESTS IN THE CONTRACT, SHALL, WHEN REQUESTED BY THE VENDOR,
16 EXECUTE A DISCHARGE OF THE CONTRACT IN THE SAME MANNER AS NOW
17 PROVIDED BY LAW FOR THE DISCHARGE OF MORTGAGES.

18 (6) A PERSON WHO IS REQUIRED UNDER THIS SECTION TO ENTER
19 INTO A CONVEYANCE OR DISCHARGE AND WHO FAILS OR REFUSES TO MAKE
20 THE CONVEYANCE OR DISCHARGE IS SUBJECT TO THE SAME PENALTIES, AND
21 TO ANY OTHER PENALTIES OR REMEDIES EXISTING BEFORE THE EFFECTIVE
22 DATE OF THIS ACT, AS ARE NOW PROVIDED BY LAW FOR A REFUSAL TO
23 DISCHARGE A REAL ESTATE MORTGAGE AFTER THE REAL ESTATE MORTGAGE
24 HAS BEEN FULLY PAID. THE PARTY ENTITLED TO THE CONVEYANCE OR
25 DISCHARGE MAY ENFORCE THE CONVEYANCE OR DISCHARGE AS PROVIDED IN
26 SECTION 44 OF 1846 RS 65, MCL 565.44, FOR ENFORCING THE DISCHARGE
27 OF MORTGAGES. THE PETITION OR BILL ASKING FOR THE DISCHARGE

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1 SHALL CONTAIN ALL THE MATERIAL AVERMENTS REGARDING THE MATTER AS
2 REQUIRED BY THAT SECTION IN REGARD TO MORTGAGES, AS APPLICABLE TO
3 LAND CONTRACTS. HOWEVER, A LAND CONTRACT IS NOT INVALID FOR WANT
4 OF ACKNOWLEDGMENT OR RECORDING.

5 (7) THIS SECTION DOES NOT RENDER A TITLE UNMARKETABLE IF
6 THAT TITLE WOULD OTHERWISE HAVE BEEN MARKETABLE.

7 (8) FOR THE PURPOSES OF THIS ACT, A MORTGAGE, DEED, OR LAND
8 CONTRACT IS SUBJECT TO ANOTHER REAL ESTATE INTEREST IF, BY ITS
9 TERMS OR BY AN INDEPENDENT VOLUNTARY SUBORDINATION, IT IS SUBOR-
10 DINATE TO THE OTHER REAL ESTATE INTEREST OR, AS A MATTER OF LAW,
11 IT WOULD BE AUTOMATICALLY SUBORDINATE TO THE OTHER REAL ESTATE
12 INTEREST.

13 Enacting section 1. Section 5 of 1879 PA 237, MCL 565.355,
14 is repealed.