

Legislative Analysis



CORRECTING PREVIOUSLY RECORDED DOCUMENTS

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House Bill 4503 (Substitute H-1)

Sponsor: Rep. Kathy Angerer

Committee: Intergovernmental and Regional Affairs

First Analysis (7-14-09)

BRIEF SUMMARY: The bill would allow affidavits to correct errors or omissions in previously recorded documents, and specifies that they may be recorded in the Office of Register of Deeds of the county where the property is located.

FISCAL IMPACT: The bill would have no fiscal impact on the Judiciary.

THE APPARENT PROBLEM:

When documents are recorded by county registers of deeds, they sometimes contain errors. For example, the errors may incorrectly describe the property (citing, perhaps, the wrong block or lot), or misspell the names of sellers or purchasers of properties. Historically, it has been customary for county registers of deeds to re-record a document that needs correction, and then cross-reference the new document with the old.

During the housing boom in the past two decades, many homeowners refinanced their home loans in order to secure more favorable mortgage terms. Those new documents were filed with the county registers of deeds, sometimes by the lending institution, but often by the homeowner. According to committee testimony, the number of errors within the documents increased substantially. Consequently, many deeds have need to be re-recorded.

Recently, legal counsels for county registers of deeds (typically a county's prosecutor) have advised that errors in documents should not require re-recording or re-execution. Instead, the county legal officials have advised that an affidavit noting the errors and sworn to by a person having knowledge of the facts should be attached to the original document containing the errors.

Legislation has been introduced to allow affidavits to correct errors in documents filed by county registers of deeds.

THE CONTENT OF THE BILL:

House Bill 4503 would amend Public Act 123 of 1915, which concerns affidavits affecting real property, to allow affidavits to correct errors or omissions in previously recorded documents.

The bill specifies that an affidavit to correct errors or omissions in previously recorded documents, including errors relating to the proper place of recording and to scrivener's errors or omissions, may be recorded in the Office of Register of Deeds of the county where the real property that is the subject of the affidavit is located.

An affidavit may be made by a person having knowledge of the relevant facts, or by a person competent to testify concerning those facts in open court, and would have to meet the requirements of Sections 1b and 1c of the act. [Section 1b specifies that anyone making a false statement in an affidavit is guilty of perjury; Section 1c concerns the protocols to be used for land descriptions.]

Further, the bill specifies that an affidavit under this section would not be necessary if a new document were recorded to indicate corrective changes and making reference to the errant recording by *liber* and page number, or other unique identifying number.

Finally, the county register of deeds must index all names recited within the affidavit.

MCL 565.451a - 565.453

ARGUMENTS:

For:

It has been customary for county registers of deeds to re-record, or re-execute, a document that needs correction, and then cross-reference the new document with the old. Often when a document is re-executed, all parties to the document must be present at the office of the county register of deeds, in order to sign the new document. To make the necessary corrections in a timely and less costly manner, the legal counsel serving registers of deeds have advised that an affidavit noting a document's errors be attached to the original document. This legislation allows county registers of deeds to use affidavits, sworn to by people having knowledge of the facts, to correct errors that have been recorded in legal documents, rather than having to re-execute the errant document in its entirety.

POSITIONS:

The Michigan Association of Registers of Deeds Association supports the bill. (7-14-09)

The Saginaw County Register of Deeds supports the bill. (7-14-09)

The Allegan County Register of Deeds supports the bill. (7-14-09)

The Newaygo County Register of Deeds supports the bill. (7-14-09)

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■ 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.