



Senate Fiscal Agency
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Senate Bill 721 (as enacted)
Sponsor: Senator Jeremy Moss
Senate Committee: Local Government
House Committee: Local Government and Municipal Finance

PUBLIC ACT 20 of 2024

Date Completed: 4-19-24

RATIONALE

The bill extended the sunset for preserving existing mineral or other property interests in a marketable record title. According to testimony before the Senate Committee on Local Government, stakeholders have tried to extend the sunset since 2020 while they work on changes to Public Act (PA) 200 of 1945. Without first extending the sunset from March 29, 2024, to September 29, 2025, the date would have passed and real property interests including easements, restrictions, and agreements to maintain roads or storm drains could have been lost. Accordingly, it was suggested that the sunset be extended to allow more time for stakeholders to modify the Act.

CONTENT

The bill amended PA 200 of 1945, which defines a marketable record title to an interest in land, to extend, from March 29, 2024, to September 29, 2025, the date by which an interest, claim, or charge in a marketable title may be preserved and kept effective by filing a notice.

The bill took effect on March 28, 2024.

Under the Act, to possess a marketable record title to an interest in land, a person must have held an unbroken chain of title of record for 20 years for mineral interests and 40 years for other interests. The marketable record title is subject to claims to that interest and defects of title in records forming the chain of record title that are recorded during the 20-year period for mineral interests or the 40-year period for other interests. ("Unbroken chain of record title" generally refers to the historic sequence of transfers of title to a property all the way back to the original owner.)

Previously, an interest, claim, or charge could be preserved and kept effective by filing for record a notice in writing, verified by oath, setting forth the nature of the claim in the manner required in the Act, by March 29, 2024, or during the 20-year period for mineral interests and the 40-year period for other interests. The bill extended this time for interests, claims, or charges to be filed for record until September 29, 2025.

Additionally, PA 572 of 2018 amended PA 200 of 1945 to change how conveyances and other title transactions are properly recorded. After PA 572 of 2018, to sufficiently identify a conveyance or other title transaction, a record must either create the divestment or specifically refer by liber and page or other county-assigned unique identifying number to a previously recorded conveyance or other title transaction that created the divestment. Public Act 572 of 2018 gave until March 29, 2021, to amend conveyances or other title transactions accordingly. The bill extended this time until September 29, 2025.

MCL 565.101 & 565.103

BACKGROUND

Marketable Titles

For Michigan's real estate industry, the only way to obtain "marketable title" on a property that is not a mineral interest is to establish an unbroken chain of title over the previous 40 years. Generally, a person who possesses a property's title has the legal right to use or modify a property. A marketable title is a title that is free and clear of all interests, claims, and charges. By tracking all interests, claims, and charges over the past 40 years and establishing an unbroken chain of title, a person can ensure that the person's property will be unencumbered by any unwanted financial obligation and the ownership of that property will be undisputed. In many cases, before a lender (like a bank, credit union, or mortgage bank) will give a mortgage loan to a buyer, they require proof that the buyer will receive a marketable title to the property. The work of establishing an unbroken chain of title for a property is generally performed by a title company.

Title Companies & Title Insurance

A title company is a third-party that works on behalf of the lender and the buyer during a real estate transaction. Generally, title companies accomplish two tasks: 1) researching if the individuals buying and lending a property have established an unbroken chain of title (record of ownership) through a title search; and 2) insuring the lender and the buyer in cases in which title defects are detected.¹ Examples of title defects include liens on a property, a mortgage or property tax not being paid by a prior owner, or an unknown or missing heir making claim to the property.

An unbroken chain of title in Michigan is 40 years old, so title companies conduct a title search on a property's chain of title from 1984 to the present day. If a property's chain of title is unbroken, the transaction continues and the property's title is marketable; however, if title defects are detected, the title company will warn the lender and buyer and either cure the defect, stop the transaction before the buyer closes on the mortgage, or exclude those defects from coverage.

The possibility that a title company could make a mistake compels lenders and buyers to purchase title insurance. Title insurance insures the lender and the buyer in cases where the title company made an error in the title search and a title defect should have been detected. In those cases, the lender and buyer are legally and financially protected so long as the title defect is covered by the title insurance. Generally, during real estate transactions, the seller of a property pays for the buyer's policy and the buyer pays for the lender's policy. In addition, title insurance generally requires only a single payment when the buyer closes on a property. Once that payment has been made, the buyer is protected for as long as the buyer owns interest in the property and the lender is protected until the mortgage is paid in full and the lender's interest in the property is concluded.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Public Act 572 of 2018 amended PA 200 of 1945 because title companies wanted to develop a method of establishing marketable record titles that used less ambiguous language when

¹ Department of Insurance and Financial Services, "Consumer Counselor: Title Insurance", 2018.

referring to previous property interests.² The previous, ambiguous standard of referring to property interests had existed since PA 200's enactment in 1945 and made title companies reluctant to distribute title insurance because of the language's role in concealing title defects.³ Public Act 572 required more consistent, specific language so that title companies would distribute title insurance more consistently, removing an impediment to development;⁴ however, PA 572 affected many property interests and resulted in significant burden for the real estate community. Reportedly, the Real Property Law section of the Michigan Bar is working on an overhaul to Public Act 200 of 1945 that addresses these concerns, but the overhaul needs more time to be introduced to the Legislature and to allow the Legislature to consider the proposal. The bill's extension of the sunset on the requirements listed above will give the Legislature time to consider the proposed overhaul to PA 200 of 1945.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

The bill will have no fiscal impact on the State and a negligible impact on local units of government.

Fiscal Analyst: Bobby Canell

² Senate Fiscal Agency, Analysis as Passed by the Senate of SB 671 of 2018, April 2018. Available on the Michigan Legislature Website: <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2017-SB-0671>.

³ *Id.*

⁴ *Id.*

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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.