

# HOUSE BILL NO. 4987

September 14, 2023, Introduced by Rep. Wozniak and referred to the Committee on Regulatory Reform.

A bill to amend 1945 PA 200, entitled

"An act to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof,"

by amending the title and sections 1, 1a, 2, 3, 4, 5, and 8 (MCL 565.101, 565.101a, 565.102, 565.103, 565.104, 565.105, and 565.108), sections 1, 2, 4, and 5 as amended by 2018 PA 572,

section 1a as added by 1997 PA 154, and section 3 as amended by 2020 PA 294, and by adding section 5a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**TITLE**

An act to define a marketable record title to an interest in land; to require the ~~filing~~ **recording** of notices of claim of interest in ~~such~~ land in certain cases within a definite period of time; ~~and to require the recording thereof;~~ to make invalid and of no force or effect all claims with respect to the land affected ~~thereby~~ where no such notices of claim of interest are filed within the required period **and to provide certain exceptions; and** to provide for certain penalties for ~~filing~~ **recording** slanderous notices of claim of interest. ~~, and to provide certain exceptions to the applicability and operation thereof.~~

Sec. 1. Any person, that has the legal capacity to own land in this state, that has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, is at the end of the applicable period considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title ~~as~~ **that** are not extinguished or barred by **the** application of this act and subject also to any interests and defects ~~as~~ **that** are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and that are recorded within 2 years after ~~the effective date of the amendatory act that added section 2(2)~~ **March 29, 2019** or during the 20-year period for mineral interests and the 40-year period for other interests. However, a person is not considered to have a marketable record title ~~by reason of~~ **under** this act if the land in which the interest

exists is in the hostile possession of another.

Sec. 1a. As used in this act: ~~"mineral interest"~~

(a) "Claimant" means a person holding an interest, claim, or charge on land and recording a notice of claim under section 3 with the office of the register of deeds of the county in which that land is located.

(b) "Mineral interest" means an interest in minerals in any land if the interest in minerals is owned by a person other than the owner of the surface of the land. Mineral interest does not include an interest in oil or gas or an interest in sand, gravel, limestone, clay, or marl.

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, governmental entity, or other legal entity.

(d) "Property owners' association" means any of the following:

(i) A person or an unincorporated association with a voting membership that is made up of owners of the land or their agents, or a combination of the owners of the land and their agents, that is any of the following:

(A) Responsible for the operation or management of the land.

(B) Authorized to enforce a document recorded with the office of the register of deeds of the county in which the land is located that subjects the land to any land-use restriction or obligation.

(ii) An association of co-owners as that term is defined in section 3 of the condominium act, 1978 PA 59, MCL 559.103.

(e) "Subdivision restrictions" means a declaration or other instrument or agreement executed and recorded on or after January 1, 1950 that provides for the establishment of a property owners' association with respect to which an owner of a lot or other parcel

1 of land that is the subject of the declaration or other instrument  
 2 or agreement is a member.

3 Sec. 2. (1) A person ~~is considered to have~~ **has** an unbroken  
 4 chain of title to an interest in land as provided in section 1 if  
 5 the ~~official public records disclose~~ **office of the register of**  
 6 **deeds of the county in which the land is located discloses** either  
 7 of the following:

8 (a) A conveyance or other title transaction not less than 20  
 9 years in the past for mineral interests and 40 years for other  
 10 interests, which conveyance or other title transaction purports to  
 11 create the interest in that person, with nothing appearing of  
 12 record purporting to divest that person of the purported interest.

13 (b) A conveyance or other title transaction not less than 20  
 14 years in the past for mineral interests and 40 years for other  
 15 interests, which conveyance or other title transaction purports to  
 16 create the interest in some other person and other conveyances or  
 17 title transactions of record by which the purported interest has  
 18 become vested in the person first referred to in this section, with  
 19 nothing appearing of record purporting to divest the person first  
 20 referred to in this section of the purported interest.

21 (2) For purposes of this section, except as to mineral  
 22 interests, a conveyance or other title transaction in the chain of  
 23 title purports to divest an interest in the ~~property~~ **land** only if  
 24 it ~~creates~~ **does either of the following:**

25 (a) **Appears to create** the divestment. ~~or if it~~

26 (b) **Except as otherwise provided in section 5a(1),**  
 27 specifically refers by liber and page or other county-assigned  
 28 unique identifying number to a previously recorded conveyance or  
 29 other title transaction that ~~created~~ **appeared to create** the

1 divestment.

2       Sec. 3. (1) Marketable **record** title is held by a person and is  
3 taken by ~~his or her~~ **the person's** successors in interest free and  
4 clear of any and all interests, claims, and charges the existence  
5 of which depends in whole or in part on any act, transaction,  
6 event, or omission that occurred before the 20-year period for  
7 mineral interests, and the 40-year period for other interests, and  
8 all such interests, claims, and charges are void and of no effect  
9 at law or in equity. However, an interest, claim, or charge may be  
10 preserved and kept effective by ~~filing for record~~ **recording** within  
11 5 years after March 29, 2019 or during the 20-year period for  
12 mineral interests ~~and or~~ the 40-year period for other interests, ~~a~~  
13 ~~notice in writing, verified by oath, setting forth the nature of~~  
14 ~~the claim in the manner required by~~ **of claim that satisfies the**  
15 **requirements of** section 5. **However, an interest, claim, or charge**  
16 **that became void under this subsection before the effective date of**  
17 **the amendatory act that added section 5a or that expires or**  
18 **terminates based on its own terms is not effective and is not**  
19 **preserved by recording a notice of claim under this subsection.**

20       (2) A disability or lack of knowledge of any kind on the part  
21 of anyone does not suspend the running of the 20-year period for  
22 mineral interests or the 40-year period for other interests.

23       (3) For the purpose of recording notices of claim for  
24 homestead interests, the date from which the 20-year period for  
25 mineral interests and the 40-year period for other interests run is  
26 the date of recording of the instrument that contains the basis for  
27 the claim.

28       (4) A notice under this section may be ~~filed for record~~  
29 **recorded by the any of the following:**

1 (a) The claimant. ~~or by any~~

2 (b) A property owners' association.

3 (c) Any other person acting on behalf of any claimant if 1 or  
4 more of the following conditions exist:

5 (i) ~~(a)~~ The claimant is under a disability.

6 (ii) ~~(b)~~ The claimant is unable to assert a claim on his or her  
7 own behalf.

8 (iii) ~~(c)~~ The claimant is 1 of a class but whose identity cannot  
9 be established or is uncertain at the time of ~~filing~~ **recording** the  
10 notice of claim. ~~for record.~~

11 (5) The recording of a notice of claim under this section by a  
12 claimant that meets all the requirements of this act to preserve  
13 the claimant's rights in the land is an effective notice under this  
14 section for any other person whose rights originate from the same  
15 document as the claimant's.

16 Sec. 4. (1) This act must not be applied to do any of the  
17 following:

18 (a) Bar a lessor or his or her successor as reversioner of his  
19 or her right to possession on the expiration of a lease or a lessee  
20 or his or her successor of his or her rights in and to a lease.

21 (b) Bar any interest of a mortgagor or a mortgagee or interest  
22 in the nature of that of a mortgagor or mortgagee until after the  
23 instrument under which the interest is claimed has become due and  
24 payable, except if the instrument has no due date expressed, **or** if  
25 the instrument has been executed by a railroad, railroad bridge,  
26 tunnel, ~~or~~ union depot company, or ~~a~~ public utility or public  
27 service company.

28 (c) Bar or extinguish an easement or interest in the nature of  
29 an easement, the existence of which is clearly observable. ~~by~~

1 ~~physical evidences of its use.~~

2 (d) Bar or extinguish an easement or interest in the nature of  
3 an easement, or any rights appurtenant to the easement or interest  
4 granted, excepted, or reserved by a recorded instrument creating  
5 the easement or interest, including any rights for future use, if  
6 the existence of the easement or interest is evidenced by the  
7 location beneath, on, or above any part of the land described in  
8 the instrument of a pipe, valve, road, wire, cable, conduit, duct,  
9 sewer, track, pole, tower, or other physical facility and whether  
10 or not the existence of the facility is observable, ~~by reason~~  
11 **because of the** failure to ~~file-record~~ the notice required by this  
12 act.

13 (e) Bar or extinguish a conservation easement. As used in this  
14 subdivision, "conservation easement" means that term as defined in  
15 section 2140 of the natural resources and environmental protection  
16 act, 1994 PA 451, MCL 324.2140.

17 (f) Bar or extinguish the rights of any remainderman on the  
18 expiration of a life estate or trust.

19 (g) Except as otherwise provided in subdivision (i), bar or  
20 extinguish any subdivision restrictions.

21 (h) Bar or extinguish any recorded master deed for a  
22 condominium or any recorded amendment to that condominium master  
23 deed.

24 (i) Preserve a prohibited restriction in a subdivision  
25 restriction, a deed, or other instruments. As used in this  
26 subdivision, "prohibited restriction" means a restriction,  
27 covenant, or condition, including a right of entry or possibility  
28 of reverter, that violates the fair housing act, title VIII of the  
29 civil rights act of 1968, Public Law 90-284.

(2) This act does not affect any right, title, or interest in land owned by the United States, ~~or any right, title, or interest in any land owned by this state, or by any department, commission, or political subdivision thereof.~~ **of this state.**

(3) This act does not affect any oil and gas lease, or other interest in oil or gas, owned by a person other than the owner of the surface, or any storage agreement or other interest in subsurface storage formations owned by a person other than the owner of the surface.

Sec. 5. (1) To be effective and to be entitled to record, a notice of claim under section 3 must contain an accurate and full description of all the land affected by the notice, ~~which and the~~ description must be set forth in particular terms and not by general inclusions. ~~However, except as to mineral interests, if the claim is founded on a recorded instrument, the notice must also state the liber and page or other county-assigned unique identifying number of the recorded instrument the claim is founded on. The failure to include the liber and page or other county-assigned unique identifying number renders the recording ineffective and the claim unpreserved.~~ The notice **of claim** must contain all of the following:

(a) The claimant's name.

(b) The claimant's mailing address.

(c) The interest claimed to be preserved.

(d) Except as to mineral interests, the liber and page or other unique identification number ~~of the~~ **assigned by the office of the register of deeds for the recorded** instrument creating the interest to be preserved.

(e) The legal description of the ~~real property~~ **land** affected



by the claimed interest.

(f) The claimant's signature.

(g) An acknowledgment in the form required by ~~the uniform recognition of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270, and section 27 of the Michigan notary public act, law on notarial acts, 2003 PA 238, MCL 55.287.~~ **MCL 55.261 to 55.315.**

(h) The drafter's name and address.

(i) An address to which the document can be returned.

(j) **The name and mailing address of all the owners of the land that claim to be affected by the notice of claim. For purposes of this subdivision, the names and mailing addresses of persons in whose names the land is assessed on the last completed tax assessment roll of the county in which the land is located at the time of recording are the owners of the land.**

(2) The following form may be used and is sufficient to record a notice of claim under section 3, although this subsection does not preclude the use of a form that is substantially similar and meets the requirements of this section:

**NOTICE**

Claimant: \_\_\_\_\_

Whose address is \_\_\_\_\_

hereby claims the following described interest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

which was originally created by \_\_\_\_\_, recorded in

liber \_\_\_\_\_, on page \_\_\_\_\_, \_\_\_\_\_ county records, and

affects land located in the \_\_\_\_\_ of \_\_\_\_\_,

County of \_\_\_\_\_, state of Michigan, and more fully

described as:

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 (Leave out a description of any restrictions, covenants, or  
 5 conditions, including a right of entry or possibility of reverter,  
 6 that violate the fair housing act, title VIII of the civil rights  
 7 act of 1968, Public Law 90-284.)  
 8 Commonly known as: \_\_\_\_\_  
 9 Tax Item No. \_\_\_\_\_

11 The owner(s) of land affected by this notice, for purposes of MCL  
 12 565.105(1)(j) is/are:  
 13 \_\_\_\_\_  
 14 whose address(es) is/are: \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_ <<Claimant>>  
 17 STATE OF \_\_\_\_\_ )  
 18 \_\_\_\_\_ ) SS.  
 19 COUNTY OF \_\_\_\_\_ )

20 This instrument was acknowledged before me on \_\_20\_\_, by  
 21 <<Claimant>>  
 22 \_\_\_\_\_  
 23 \_\_\_\_\_, Notary Public  
 24 \_\_\_\_\_ County, Michigan

25 My Commission expires: \_\_\_\_\_  
 26 Acting in \_\_\_\_\_ County, Michigan

27 Drafted by: \_\_\_\_\_ Return to:  
 28 \_\_\_\_\_  
 29 \_\_\_\_\_

1  
2       (3) ~~(2)~~—A notice of claim under section 3 must be ~~filed for~~  
3 ~~record~~**recorded** in the register of deeds office of the county or  
4 counties where the land described in the notice is located. The  
5 register of deeds of each county shall accept all notices of claim  
6 under section 3 that are presented to the register of deeds that  
7 describe land located in the county in which the register of deeds  
8 serves and shall enter and record full copies of the notices in the  
9 same way that deeds and other instruments are recorded.

10       (4) ~~(3)~~—A register of deeds is entitled to charge the same  
11 fees for the recording of a notice under section 3 as are charged  
12 for recording deeds. In indexing notices under section 3, a  
13 register of deeds shall enter the notices under the grantee indexes  
14 of deeds under the names of the claimants **appearing in the notices,**  
15 **and the grantor indexes under the names of the owners of the land**  
16 **appearing in the notices.**

17       Sec. 5a. (1) A deed that conveys land or warrants title to  
18 land subject to an interest, claim, or charge or a mortgage that  
19 encumbers land or warrants title to land subject to an interest,  
20 claim, or charge is not an effective notice of claim of an  
21 interest, claim, or charge in the land for purposes of section 2 or  
22 3 if the deed or mortgage states that the reference to the  
23 interest, claim, or charge is for the sole purpose of limiting the  
24 warranty in the instrument and does not create, preserve, or  
25 continue the interest, claim, or charge under this act. The  
26 inclusion of the following statement in the deed or mortgage is  
27 sufficient to preclude the creation, preservation, or continuation  
28 of an interest, claim, or charge in the land, although this  
29 subsection does not preclude the use of a statement that is

1 substantially similar to the statement under this section:

2 "The references to the exceptions to title by liber and page  
3 in this instrument are for the sole purpose of limiting the  
4 warranty or covenant of title, as applicable, in this instrument  
5 and do not create, preserve, or continue the interest, claim, or  
6 charge under 1945 PA 200, MCL 565.101 to 565.108".

7 (2) A statement in a deed recorded with the office of the  
8 register of deeds of the county in which the land is located that  
9 includes a statement that an interest is conveyed "subject to  
10 easements and restrictions of record" or a substantially similar  
11 language, without reference to any liber and page, is not effective  
12 to create, preserve, or continue any recorded easements or  
13 restrictions of record for purposes of section 2 or 3.

14 Sec. 8. ~~No~~**A** person shall **not** use the privilege of ~~filing~~  
15 **recording** notices ~~hereunder~~**under this act** for the purpose of  
16 slandering the title to land. ~~, and in~~**In** any action brought for  
17 the purpose of quieting title to land, if the court ~~shall find~~  
18 **finds** that any person has filed a claim ~~for that reason only, he~~  
19 **solely for the purpose of slandering the title to land, the court**  
20 shall award the plaintiff all the costs ~~of such~~**incurred as a**  
21 **result of the** action, including ~~such~~ attorney fees as the court may  
22 allow, ~~to the plaintiff, and in addition, the court shall decree~~  
23 ~~that order~~ the defendant asserting ~~such the~~ claim ~~shall to~~ pay to  
24 **the** plaintiff all damages that **the** plaintiff may have sustained as  
25 the result of ~~such the recording of the~~ notice of claim. ~~having~~  
26 ~~been so filed for record.~~