



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ELIMINATION OF WITNESS REQUIREMENTS FOR CERTAIN LAND CONVEYANCE AND LAND DIVISION INSTRUMENTS

House Bill 5022 (Substitute H-1)
House Bill 5023 (Substitute H-2)
House Bill 5024 (Substitute H-1)
House Bill 5025 as introduced
First Analysis (10-10-01)

Sponsor: Rep. Alan Sanborn
Committee: Local Government and
Urban Policy

THE APPARENT PROBLEM:

Various laws require that a person executing land conveyance and land division instruments—e.g., a deed, a contract for the sale of land, and a proprietor’s certificate on a plat—“acknowledge” the execution of the instrument before an authorized officer before it can be recorded with the register of deeds. Authorized officers include judges, clerks of a court of record, and notaries public, depending on the specific law. The “Uniform Recognition of Acknowledgements Act” defines the words “acknowledged before me” to mean the following: the person acknowledging an instrument appeared before the person taking the acknowledgment; the person acknowledged that he or she executed the instrument; and the person taking the acknowledgement either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate. The act further requires that the various parties who may execute instruments have the authority to do so and are doing so for the purposes stated within the instruments.

During testimony before the committee, a representative of the Michigan Land Title Association (MLTA) suggested that recording requirements for real property (land) instruments find their theoretical underpinning in two basic needs: the need for verification and the need for authentication. In other words, the person who purports to execute the instrument must *verify* that he or she is executing the instrument of his or her own free will. Moreover, there must be some means of *authenticating* the instrument—i.e., identifying the person purporting to execute the instrument is who he or she claims to be and thereby ensuring that he or she may legally execute the instrument.

The various real property laws also require that the instruments be executed within the presence of two witnesses. Some people believe that witnesses do not play any significant role in either the verification or authentication of such instruments. Instead, they suggest that verification and authentication occur when the person acknowledges the instrument’s execution before the public officer. Thus, they regard the witness requirement as superfluous and believe that it should be eliminated.

THE CONTENT OF THE BILLS:

House Bills 5022 and 5024 would eliminate witness requirements for certain land conveyance instruments that must be recorded with the register of deeds. House Bill 5025 would eliminate the witness requirement for a proprietor’s certificate on a plat. House Bill 5023 would simplify recording requirements for “instruments by which the title to, or any interest in, real estate is conveyed, assigned, encumbered, or otherwise disposed of”; this would include both the land conveyance instruments covered by House Bills 5022 and 5024 and a proprietor’s certificate on a plat.

House Bill 5022 would amend Chapter 65 of the Revised Statutes of 1846 (MCL 565.8 and 565.47), which covers alienation by deed, the proof and recording of conveyances, and the canceling of mortgages, to eliminate witness requirements from the procedures for recording deeds and mortgages. Currently the law requires that deeds of lands, or any interest in lands, be executed in the presence of two witnesses. The law further states that persons executing the deeds may acknowledge the execution before any judge, clerk of a court of record or notary

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public within the state. The bill would eliminate the witness requirement, requiring only that such deeds be acknowledged before a judge, clerk of a court of record, or notary public within the state.

Currently the law also states that no deed, mortgage, or other instrument that affected the title of lands or any interest therein and that was required to be acknowledged could be recorded by the register of deeds of any county unless the instrument was witnessed and acknowledged or otherwise proved. The bill would eliminate the reference to the witness requirement, stating only that the register of deeds could not record such an instrument unless it was acknowledged or otherwise proved.

House Bill 5024 would amend Public Act 237 of 1879 (MCL 565.351), which covers land contracts, to eliminate the requirement that contracts for the sale of land or any interest therein be executed in the presence of two witnesses. The bill would specify only that such contracts must be executed by the vendor of the contract and acknowledged before a judge or notary public within the state.

House Bill 5025 would amend the Land Division Act (MCL 560.144) to eliminate the requirement that the signing of a proprietor's certificate on a final plat be witnessed by two persons. (A plat is a map or chart of a subdivision of land. A proprietor's certificate must be signed and submitted for approval, in accordance with other provisions of the act, to entitle a final plat of subdivided land to be recorded by the register of deeds.) However, each signature on the certificate would still have to be "acknowledged as deeds conveying lands are required to be acknowledged," which means that it would have to be acknowledged before a judge, clerk of a court of record, or notary public within the state, as specified above.

House Bill 5023 would amend Public Act 103 of 1937 (MCL 565.201), which sets forth requirements for recording with a county's register of deeds instruments executed after October 29, 1937 by which the title to, or any interest in, real estate is conveyed, assigned, encumbered, or otherwise disposed of. The bill would make several changes to these requirements. First, the law currently states that the name of each person who executed the instrument must be legibly printed, typewritten, or stamped immediately beneath the person's signature. It also states that the address of each such person must be printed, typewritten, or stamped upon the face of the instrument. The bill would eliminate the requirement that the person's address be recorded on the face of the instrument. Further, the bill would

specify that the name of each person who *purported to execute* the instrument had to be legibly printed, typewritten or stamped beneath his or her *original signature or mark*. The bill would, however, eliminate a provision detailing the intent of the legislature in requiring that the name of a person be "printed, typewritten, or stamped upon such instrument immediately beneath the signature." Second, in accordance with the elimination of witness requirements, the bill would eliminate the requirement that the name of each witness to the instrument be printed, typewritten, or stamped upon the instrument immediately beneath the signature of the witness. Third, the bill would retain a requirement that the name of any notary public whose signature appears upon an instrument must be legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of that notary public. In accordance with current law, however, any instrument received and recorded by a register of deeds would be conclusively presumed to comply with the act. Fourth, the bill states that an instrument that complied with the provisions of the act and any other act relating to the recording of instruments could not be rejected for recording because of the content of the instrument.

FISCAL IMPLICATIONS:

With regard to the bills as they were originally introduced, the House Fiscal Agency has reported that they have no fiscal implications. (9-28-01)

ARGUMENTS:

For:

The witness requirement is an unnecessary nuisance. The requirement is unnecessary because the public act of acknowledging the execution of an instrument before an authorized officer provides assurance that the person is executing the instrument of his or her own free will. Moreover, identification procedures have progressed significantly since the witness requirements were enacted, and an authorized officer, such as a clerk of court or a notary public, is required to ensure that the person acknowledging the instrument is the person purporting to execute it. If the circumstances of the instrument's execution are called into doubt, the authorized officer can testify reliably regarding the acknowledgement. Although there is no reason to believe that the typical witness would intentionally deceive anyone regarding the execution of an instrument, witnesses are not required to record their addresses on the instrument, and thus it may be difficult to find them if they are

needed. In practice, some people are even asked to sign instruments as “witnesses” without having seen the person sign or otherwise mark the instrument. Further, the authorized officer often acts as one of the two witnesses anyway. Although such acts may not conform to the “spirit” of the law, they attest to general confusion about why witnesses are required at all.

In addition to being unnecessary, the witness requirement is a nuisance. An instrument that is missing witnesses’ signatures cannot properly be recorded with the register of deeds. Although the courts have the ultimate authority to determine whether an instrument is effective and enforceable, registers of deeds frequently reject as incomplete instruments that do not have the witness signatures. This delay in the recording of an instrument can lead to credit problems and other problems associated with cloudy titles. This is especially frustrating when one considers that 40 states have no witness requirements for such instruments and that a person who executes an instrument in one of those states, in accordance with that state’s laws, may acknowledge its execution before an authorized officer in this state. Once the instrument has been acknowledged, it may be submitted for recording with the register of deeds, without any witness signatures. On the other hand, an instrument executed in this state can be delayed for weeks or months because it does not have the required witness signatures.

With the advent of e-commerce, the witness requirement begins to look even more anachronistic. The Michigan Land Title Association and the Michigan Association of Registers of Deeds are participating in an electronic recording joint task force convened by the Real Property Section of the State Bar Association. It is not clear how the witness requirement would be met in the age of electronic signatures. Since the witness requirement is an unnecessary nuisance, independently of such concerns, it should be eliminated.

Against:

The Wayne County Register of Deeds has suggested that the elimination of the witness requirement “may make the possibility of fraud easier to achieve.” Getting rid of the requirement would place the weight of verification and authentication on one person alone, and although that person is an authorized public officer, the law’s current system of checks and balances provides some additional assurance that the instrument has been executed legitimately. The witness requirement provides additional protection to the parties involved.

POSITIONS:

The Michigan Land Title Association supports the bills. (10-9-01)

The Michigan Association of Registers of Deeds supports the bills. (10-9-01)

Analyst: J. Caver

■ 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.