



Todd Schmitz
Deputy Clerk

Carmella Sabaugh

Macomb County
Clerk/Register of Deeds

Betty A. Oleksik
Deputy Register of Deeds

February 24, 2014

The Honorable Marilyn Lane
State Representative
P.O. Box 30014
Lansing, MI 48909

Dear Representative Lane:

I am writing in support of House Bills 4638, 4639, 4640. Unfortunately, there are real estate documents that have been executed, delivered and relied upon, but which have been lost or destroyed. I believe the mortgage and title industries bear some responsibility for past sloppy practices contributing to this problem; and, perhaps, in the future it might be worth considering whether the public would be better protected against such abuses by changing the law to require all real estate transactions to be publicly recorded. But the fact remains that real estate documents have been executed, delivered, relied upon, and then lost or destroyed and the chain of title in those cases is now subject to uncertainty, possibly delaying a homeowner's ability to buy or sell a home or get a mortgage. These bills address this problem by providing a streamlined process to get such documents into the public records that are currently not in the public records.

This package also provides uniformity in an area where there are conflicting bankruptcy court cases and this package provides a way for homebuyers to get clear title without the expense or delay of court proceedings. Of course, quiet title actions and other court review would still be available to homeowners in cases of fraud and in other circumstances.

I was initially concerned about the risk that a fraudulent affidavit could be filed regarding a deed that never originally existed. However, Registers of Deeds routinely accept affidavits, and the risk of fraud from affidavits under these bills is no greater than with any other affidavit. At the request of Registers of Deeds, the bills include more safeguards than originally proposed, including requiring the original grantors and grantees be indexed and requiring some specific facts be affirmed in the affidavit.

Clerk's Office

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It has been suggested that the affidavits be sent with return-receipt requested as part of a proof of service requirement. However, I also serve as clerk of the circuit court, and there are many situations in court where a proof of service is valid without requiring return-receipt. I am concerned that a return-receipt requirement would be overly burdensome, especially if verification of that fact were to become an additional recording requirement.

Although the title and mortgage industries bear some responsibility for the lost or destroyed documents and they will benefit from these bills, the bottom line for me is that this package of bills provides a way to get real estate documents that are currently not part of the public record onto the public record.

I especially want to thank State Representative Marilyn Lane for her tireless efforts in trying to address the concerns of Registers of Deeds in this package of bills and for her leadership on this issue.

Thank you for considering my opinion. Please do not hesitate to call me if I may provide any additional information.

Sincerely,

A handwritten signature in cursive script, reading "Carmella Sabaugh".

Carmella Sabaugh
Macomb County Clerk / Register of Deeds