

MICHIGAN REALTORS® POLICY MATTERS



Marketable Record Title Act Deadline Extension

The legislature worked at high speed this week to extend a March 29th deadline to file records of easements and restrictions under the Marketable Record Title Act, affecting both commercial and residential property.

The Marketable Record Title Act was created in 1945. The law operated to extinguish claims older than 40 years unless a new document was recorded. Over time, the industry began inserting the language “subject to easements and restrictions of record” into almost every deed and survey, and this was viewed by the title community as largely preserving those restrictions older than 40 years old.

In 2018, at the behest of title insurance companies, the legislature changed the Marketable Record Title Act to no longer accept the “subject to...” language, giving property owners 2 years in which to file easements, restrictions, and other claims, by book and page number if they wished to preserve them. The goal was to free up property from old restrictions and allow title companies to insure over them, providing for redevelopment without litigation for clear title. We supported the legislation. Unfortunately, this sweeping change resulted in several unforeseen questions.

Since then, Michigan Realtors® and other stakeholders have since worked with the legislature to extend that deadline for 5 years to sort out specific details. As I mentioned earlier, those 5 years expire on March 29th. Without legislative action many long-honored restrictions could have gone away, greatly impacting postwar subdivision associations and commercial/industrial developments built between the 60’s and 80’s.

Senate Bill 721, sponsored by Senator Jeremy Moss (D- Southfield), is expected to be signed into law by Governor Whitmer before March 29th. This will provide additional time to preserve these long-recognized restrictions that have not yet been filed by book and page number.

In addition, Michigan Realtors® is working with stakeholder groups on additional legislation that would clarify the ambiguities around the Marketable Record Title Act. This legislation would preserve subdivision restrictions recorded after 1949, as well as condominiums, and provide a clear process to preserve older restrictions still actively used. In addition, it will protect commercial property restrictions and agreements recorded after 1950.



Brad Ward, Esq.

Vice President of
Public Policy &
Legal Affairs