

REAL PROPERTY/REGISTER OF DEEDS

Issue

Whether the State Bar of Michigan should support enforcement of the statutory requirement that county Registers of Deeds maintain entry books pursuant to MCL 565.24.

Synopsis

Michigan is a “race-notice” state when it comes to determining the priority of interests in real property, such as deeds and mortgages. Specifically, when a document is received by a Register of Deeds for recording, the Register of Deeds is statutorily required to immediately log the document into an “entry book” by time, hour, minute and date. *See*, 1846 RS 65 (the “Act”); MCL 565.24. Logging the document into the entry book constitutes the act of recording under the Act. The date and time on which the document was logged determines who wins the “race” to the Register of Deeds and therefore who has first priority in the property over subsequently recorded interests. MCL 565.27

The “entry book” is a public record and serves as the only record of priorities of interests in real property until the recorded documents are permanently indexed by the names of the parties of interest and assigned liber and page or document numbers.

Many Registers of Deeds in Michigan do not maintain entry books. Instead, they hold the documents they receive for recording until they are able to permanently index the documents. In many counties, the result is a significant *gap* of time between the time a document is left with a Register of Deeds for recording and the time the document is logged into the permanent, publicly accessible index. For example, in Wayne County the gap is often 90 - 180 days.

The law requiring book entries is over 150 years old. When book entries are made, fraud is prevented. For example, during the gap, it is impossible to determine if someone has a priority interest in a piece of real estate, thereby allowing unscrupulous parties to sell the same parcel of land more than once before the buyer can figure out that someone else has already purchased the same land. In addition, the gap allows people to obtain multiple mortgage loans against the same property without the knowledge of their lenders, resulting in secured debts exceeding the value of the property (i.e. unsecured debts).

Title companies and real estate practitioners are experiencing an increasing number of such claims that could have been prevented with book entries. Mortgages are being set aside in bankruptcy courts as preferences because lenders are unable to establish proofs as to when documents were actually presented to the Register of Deeds. The cost of the gap’s resulting disputes among lenders and title insurers regarding the priority of mortgages, deeds and other interests in real estate are being passed on to the public in many ways.

Opposition to Proposal

None known.

Fiscal Impact of the Proposal on the State Bar of Michigan

None known.

Suggested Resolution

By vote of the Representative Assembly on April 29, 2006

The State Bar of Michigan should support enforcement of the statutory requirement that county Registers of Deeds maintain entry books pursuant to MCL 565.24.

(a) Yes

or

(b) No