



## Deadline Extended: Marketable Record Title Act Brings New Requirements for Preserving Land Restrictions & Easements

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***This article includes an important update from its original publication on February 21, 2024. On March 28, 2024, Governor Whitmer passed Senate Bill 721 which goes into effect immediately, extending the MRTA deadline to file notices of claims of interest by September 29, 2025.***

The Michigan Marketable Record Title Act (MRTA) has an **important updated deadline of September 29, 2025** for preserving certain property interests that originated more than 40 years ago. Originally designed to simplify the process of determining all owners of a property interest, the Act eliminates certain property rights and interests including, but not limited to, older covenants, deed restrictions, and easements by letting them expire under certain circumstances after a 40-year period (20 years for mineral rights) unless action is taken to preserve the interest before September 29th. If the owner of the interest at issue wishes to maintain the restriction, easement, or other property rights beyond the 40-year period, they will need to take affirmative action to preserve that property interest by recording a notice.

The Act's foundational intent was to simplify and streamline the determination of who owns an interest in Michigan property. However, amendments to the Act in 2018, 2020, and 2022 allowing several carve-outs and exceptions to the 40-year rule have led many to suggest that MRTA's original purpose has been compromised.

To help individual property owners and homeowners/condo associations understand the Act and what actions they may need to take, we provide the following review of the MRTA and considerations for property owners.

**MRTA Amendments Usher in Big Changes in Recording, Preserving Property Restrictions**

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Michigan lawmakers enacted the original version of MRTA in 1945. The desire to simplify historic, legacy deed restrictions led 17 other states to adopt similar laws addressing extinguishment of older interests and preservation of the same by affirmative action.

The Act's essential measures include:

- **Stricter Requirements for Preserving Restrictive Covenants** – Previously, a simple mention in the deed that a property was “subject to easements and restrictions of record” was enough information to preserve previous easements and restrictions that were last recorded more than 40 years ago (20 years for mineral rights) ... **not anymore**. Now, specific references (liber, page, or instrument numbers) to the public record where the restrictions were originally recorded within the 40-year chain of title will be required if they are to be preserved.
- **Grace Period for Recording Older Restrictions** – If a property interest would have expired due to this amended Act, it can be preserved by recording a Notice that meets the Act's requirements before September 29, 2025.
- **Some exclusions apply.** To name a few, the Act cannot extinguish clearly observable easements; unobservable interests that are for the operation, construction, maintenance, improvement, removal, replacement, or protection of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility; many environmental conservation easements; or oil and gas leases.

### **Considerations for Property Owners**

The extent to which MRTA's exclusions will apply is unclear. But if a property is subject to any sort of easement (and there are many types of easements) or other land use restrictions, there are a few steps which would be well advised, including:

- **Identify and Review Relevant Documents** – Gather and carefully review all deeds, title reports and any documentation mentioning or illustrating easements or other property use restrictions. This review will help property owners to establish existing rights and identify potentially vulnerable easements requiring attention.
- **Consult an Experienced Real Estate Attorney** – Due to the complexities of property law and the still-unclear aspects of the amendments to the MRTA, it is critical to collaborate with specialized legal counsel. An attorney can quickly identify areas of concern regarding problematic easements or other land covenants, assess your risks, provide advice, help with research, file required notices and take other necessary steps. (Easements and deed restrictions can sometimes be confusing, illogical, and mysterious. Property owners attempting to address them without the assistance of an experienced attorney, do so at their own peril.)
- **Consider Filing Claims of Interest** – Restrictive covenants or easements filed within the past 40 years are generally protected, but any interest last recorded outside the 40-year chain of title needs to be addressed and evaluated. This is especially true of any claim preserved solely with vague, general references such as “subject to easements of record.” For such restrictions or easements to be preserved, the filing of a “notice of claim of interest” referring to the specific document which created the easement is required to be filed with the Register of Deeds by September 29, 2025.

- **Stay Informed** – As with any new or amended regulatory measure, the legal landscape surrounding MRTA and its interpretation may further evolve as it is applied in the real world. Keep abreast of court decisions and legislative action that may have implications for your real property holdings.

Clearly, the MRTA is not without its complexities and uncertainties. Eventually, real world experience and judicial review will clarify the law. If it can function as originally intended, it will surely offer valuable and lasting benefits for property owners and greatly simplify the process of preserving or excluding easements and restrictive covenants.

*The attorneys of Foster Swift's Finance, Real Estate & Bankruptcy Law Practice Group are well versed in the Michigan Marketable Title Record Act. They can assist property owners with their concerns or questions about easements and/or land use restrictions. Contact Sara Cunningham (scunningham@fosterswift.com/517-371-8281), McKenna Rivers (mrrivers@fosterswift.com/517-371-8294) or another member of the practice group.*