



## State News

# TWO MICHIGAN CASES AFFECT LENDERS

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**T**here have been two state court of appeals decisions affecting lenders this year in Michigan.

The first case involved a city registration ordinance requiring owners of abandoned residential structures to register the property and pay a monitoring fee. In *Kenefick v City of Battle Creek*, the plaintiff property owner argued that the terms used in the city ordinance including "vacant", "abandoned", and "potential hazard to danger to persons" were unduly vague. The Michigan court of appeals upheld the constitutionality of the registration ordinance finding that the ordinance was not unconstitutionally vague on its face because any reasonable person would be placed on fair notice of what was required. The court relied on the common dictionary definitions of the words in holding that the words' plain meanings were not vague or misleading. In addition, the court found that the city did not have unlimited discretion in applying the ordinance. The court also concluded that the "rational-basis" test applied in analyzing the ordinance's constitutionality and that the general reduction of blight was legitimate government purpose.

A second case of interest involved mortgage priority in light of Michigan's "race-notice" recording statute. In *Washington Mutual Bank v JP Morgan Chase Bank*, both mortgagees held their mortgages by assignment. WaMu's predecessor in interest (Long Beach) was given its mortgage after Chase's predecessor (Upland), but recorded it first with the register of deeds. The material issue was whether Long Beach acted in good faith and without knowledge of Upland's mortgage allowing Long Beach priority. The court concluded that although Long Beach recorded its mortgage first, Long Beach had "inquiry notice" of Upland's prior unrecorded mortgage based on several documents where the Upland mortgage was referenced. These documents included the borrower's loan application and credit report. Even though the borrower signed an affidavit stating there were no prior liens, the court held that "an ordinary, honest person would have been prompted to make an inquiry, before completing the loan transaction, into whether an unrecorded mortgage loan existed," which the owner failed to dis-

close. Since there was no evidence that Long Beach made any inquiry, it could not rely on the fact that it recorded its mortgage first and the defendant's mortgage was senior.



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