

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2129

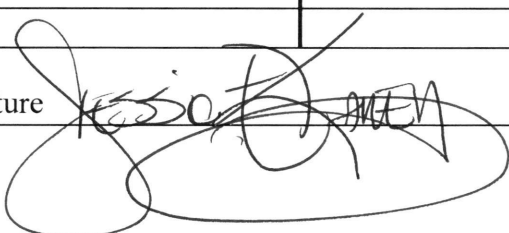
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2129

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 6, 1999

Tape Number	Side A	Side B	Meter #
1		x	
2	x		
Committee Clerk Signature 			

Minutes:

Senator Mutch called the meeting to order. All senators present.

Senator Mutch opened discussion on SB2129.

Senator Lee introduced the bill.

Discussion was held.

Claus Lembke spoke in support of SB2129. Testimony attached.

SENATOR HEITKAMP: This has no effect on the relator, I agree with you if all relators are all like yourself and do business in a very honest way. If you have relators that do business in a less than honorable way, it could be a big difference. So, we are opening up an area here, if we pass it, where someone is exposed, the way I see it, to making sure that they do their homework in a field that they don't live in. Wouldn't you agree?

MR. LEMBKE: I agree to an extent that if it was an option, but it isn't an option. You cannot get a mortgage without title insurance today. It says so in your bill. Your point would be well taken if it was something for cash. That is already a law.

SENATOR HEITKAMP: I paid cash for the lot that I bought.

MR. LEMBKE: There was no mandate that you had to have title insurance. This is only if you have title insurance that you have to get an opinion. If you buy for cash there is no mandate that you have to get an opinion.

SENATOR HEITKAMP: I got the opinion just because it was smart. The other question I have, just to follow up, is that how in the world can it be cheaper to insure something that you don't already have an insurance policy of an opinion? Do you see what I'm getting at? You told me that if you took the whole thing and you didn't have an opinion that we are paying a higher rate right now. To me my exposure to risk here is severely less, the amount of insurance that I'm going to charge you is going to be less. To me the premium would go up wouldn't it?

MR. LEMBKE: No.

More discussion took place.

Charles McCay from Farm Credit Services appeared in support of SB2129 and proposed an amendment to the bill.

SENATOR SAND: Joe Smith comes in and he needs to have funds to run his farm and, if I heard you right, your association would be happy if an abstractor came in and said here is the abstract for the property concerned. Do you not get a lawyers opinion then?

MR. McCAY: Yeah right now we do. Our regulator is a real stickler on title insurance. Before we can close the real-estate loan we will get the abstract updated and get the title opinion before we can close the loan.

SENATOR SAND: If I hear you right sir, you hardly ever use a title insurance company then?

MR. McCAY: Currently that is true. We are in an eleven state district in all of the other ten states they routinely use title insurance, not all the time, but it is always a matter of where they can get the lowest cost and the best curvage. If their cost and service advantage is updating abstracts and getting their local attorney to write an opinion, that's the way they do it. If their cost and service advantage is to use a title insurance company, that's the way they do it. We would like to have that opportunity here in North Dakota as well.

SENATOR KLEIN: Are we taking the abstractors and the attorneys out of the loop here?

MR. McCAY: The original bill does not take the attorneys out of the loop. Our amendment would do the same thing for the abstractor. It gives the title insurance company the option of whether they have the abstractor update the abstract and use that as their information for determining title or if they find a different route of doing which may be going to the courthouse and doing it themselves.

Doreen Mehlhoff testified on behalf of the North Dakota Association of builders in support of SB2129. Her testimony is attached

Discussion took place.

Grant Shaft spoke, on his own behalf, in opposition to SB2129. His testimony is attached.

SENATOR HEITKAMP: Earlier we heard a reference made to a fact that the what have we gained when we gain the attorneys opinion because the attorney doesn't stand behind it anyway when it comes crunch time?

MR. SHAFT: Well, in North Dakota, as you might know, attorneys customarily have what we call malpractice insurance. It is true that in a situation where an attorney examines an abstract, that attorney is exposed to liability. Customarily what you will find in a title insurance company in North Dakota is that they are very selective as to who they use as their agent.

SENATOR SAND: You told us that a tax deed is no good, but a tax deed given by the county would make the county liable, wouldn't it?

MR. SHAFT: No it wouldn't.

SENATOR SAND: Throughout this whole process when I get an attorneys opinion and he has looked at the abstractor, he must have a great deal of confidence in the abstractor because he is reading what the abstractor has done and then he says that this is good. So, all of this does eventually fall to the competency of the abstractor.

MR. SHAFT: That is correct. Actually with the abstractor you add a third level of protection. The system as it sits now is safeguarded in that you have trained abstractors who were examined in the state of North Dakota and issued licenses.

More discussion took place.

Paul Hubbard spoke on his own behalf in opposition to SB2129.

John Korsmo Spoke on his own behalf in opposition to SB2129.

Discussion took place.

MR. LEMBKE spoke again. His notes are attached.

Date: 1/12/99
 Roll Call Vote #: 2129 AMEND FROM CLRS

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.

Senate _____ Committee _____

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO AMEND

Motion Made By SENATOR KREBSBACH Seconded By SENATOR THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch		X			
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson					

Total (Yes) 5 No 1

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

377541

Date:
Roll Call Vote #: 2129

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS, AND LABOR Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By SENATOR SAND Seconded By SENATOR THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern					
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment SENATOR MUTCH

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2129: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2129 was placed on the Sixth order on the calendar.

Page 1, line 10, remove the overstrike over "~~firm, or corporation~~"

Renumber accordingly

1999 TESTIMONY

SB 2129



North Dakota ASSOCIATION of REALTORS®

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Testimony on SB 2129

January 6, 1999

TO: Senate Industry, Business and Labor Committee
FROM: Claus Lembke, Executive Vice President, ND Association of REALTORS®

Mr. Chairman and Members of the Senate IBL Committee:

SB 2129 is consumer legislation that is long overdue. The substance of the bill before you are the changes on line 12 whereby the word **may** makes a title examination optional rather than mandatory.

Our existing law (under 26.1-20-05) mandates that the title evidence be examined by an attorney whether needed or not. North Dakota and Oklahoma are the only 2 States in the Nation that still have this mandatory language in the statutes.

Title Examinations, often referred to as Attorneys Title Opinion, are needed to ascertain that a seller of a real property can convey a good title and also tell the lender if any proposed new loans for the new owner are valid liens against said property. This was common practice prior to the 1960's and 70's. Today more and more mortgages are sold to the secondary markets. This secondary market requires that the property be insured by so called "Title Insurance". Such title insurance is usually subject to bringing the abstract up to date and then receiving an attorneys opinion on the updated Abstract.

Title Insurance Companies, such as Chicago Title or Minnesota Title, do not necessarily require an attorney opinion to refinance existing mortgages. In the last 10 years we find that thousands of homeowners refinanced their homes at lower interest rates and in most of these cases they paid for an attorney's opinion even though the insurance companies did not require such procedures. This added an unnecessary closing cost of \$60 to \$200 to each refinancing plan.

The underwriting criteria from the Title Insurance Companies should determine whether a title opinion is needed, not mandatory state law. Having a mandate that requires attorney opinion means guaranteed income for those attorneys that do a lot of this type of work.

We are not saying that attorney's opinions are not needed. They often serve a good purpose and offer a great deal of protection to the new owner and lender. While our existing law is a well-intended consumer protection we find more often than not, it adds unnecessary cost to the consumer. Attorneys will tell you that opinions protect the customer. We say only if they are asking for it. To get title insurance they do not

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Doreen Mehlhoff, Executive Officer



Testimony in Support of SB2129 **Senate Industry, Business and Labor Committee** **January 6, 1999**

Prepared by
Doreen Mehlhoff, Executive Officer
North Dakota Association of Builders

Mr. Chairman and members of the Senate Industry, Business and Labor Committee, the North Dakota Association of Builders encourages your support of SB2129. Our state association represents 1,418 builder and associate members belonging to the six local home builders associations in Dickinson, Minot, Bismarck-Mandan, Jamestown, Grand Forks, and Fargo-Moorhead.

We see this bill as a way for consumers to lessen their costs when buying a home – if they so choose. It makes title examinations optional, and allows the consumer the opportunity to decide if it is necessary.

Studies by our national association, the National Association of Home Builders (NAHB), have shown that as costs are lowered in the home buying process, a greater percent of families attain eligibility and are able to afford a home. Though the title examination represents a relatively small amount of money in the overall purchase price of a home, we believe that every dollar makes the difference to families, especially young families, when making a home-buying decision.

Homeownership is the cornerstone of family security, stability, and prosperity. It strengthens our communities, adds to civic responsibility, and provides a solid economic foundation. For the typical homeowner, home equity accounts for about one-half of their total net worth – making their home a key to establishing financial security.

The North Dakota Association of Builders respectfully asks you to vote favorably on SB2129 which could benefit future home buyers across the state.

proposed amendment

senate bill no.2129

LINE 9 OF THE BILL - DELETE ALL WORDS AFTER THE WORD "MAY"

LINE 10 OF THE BILL- DELETE FIRST 4 WORDS AND INSERT IN THEIR PLACE THE
WORD "SECURE"

The purpose of this amendment is to allow the title insurance company to determine the type, amount and source of title information needed to issue a policy.

SENATE INDUSTRY BUSINESS AND LABOR COMMITTEE
January 6, 1999

TESTIMONY OF GRANT H. SHAFT
RE: SENATE BILL 2129

Mr. Chairman and Members of the Committee:

My name is Grant Shaft and I am a practicing attorney in Grand Forks, North Dakota. Not so very long ago (1987 and 1989), I served as a member of the North Dakota House of Representatives and as a member of the House Judiciary Committee. I am also a certified abstractor in the State of North Dakota and currently serve as the Chairman of the Real Property Section of the State Bar Association and a member of the Title Standards Committee. My practice in Grand Forks concentrates primarily in the area of real estate law. Our office is a licensed agent of Chicago Title Insurance Company and we act as a closing and title office for transactions in the Grand Forks area. I also represent numerous real estate agencies along with the Grand Forks Board of Realtors. I am here today, on my own behalf, to express my opposition to Senate Bill #2129.

It will perhaps be helpful to the Committee to briefly discuss what title insurance is. The common real estate transactions we deal with involve either a sale of real estate from one party to the other or a mortgage given by a property owner to a bank. In both of these situations, either the person purchasing the real estate or the bank lending the money, require some assurance that title to the real

estate is marketable. Historically, an abstract is prepared for the specific piece of real estate which essentially discloses a summary of all recorded documents that pertain to that piece of real estate. This abstract is then examined by a licensed attorney who issues an opinion as to who owns record title to the real estate and what encumbrances are against the real estate. Based on this information, the parties proceed to close their transaction.

In the last ten years, title insurance has slowly replaced abstract opinions as the method for assuring marketable title to real estate. This shift was prompted by lenders selling their mortgages on the secondary market. Years ago when a local lender kept the loan, an opinion from a local attorney was sufficient. However, as loans were sold on the secondary market, a lender, for example in Florida, who purchased a loan from Grand Forks, would have no idea as to the local lawyer's abilities to examine title and whether he or she was financially responsible to back up any errors in the opinion. Therefore, the secondary market prefers that a title insurance company issue an insurance policy insuring that the title to the real estate is marketable or that the loan has proper priority. This way, the title is insured by a large title company which is approved through the insurance commissioner's office.

Whether using an abstract opinion or issuing a title insurance policy, under North Dakota law, a licensed attorney must examine the record history of the real

estate to arrive at his or her opinion as to marketability of title. With title insurance, this requirement is addressed statutorily in Section 26.1-20-05 of the *North Dakota Century Code*. This section requires a title insurance agency to have the record title examined by an attorney based on a review of record title evidence issued by a licensed abstractor. This is the bill which is before you today.

Senate Bill 2129 essentially eliminates the requirement that the record title evidence be examined by an attorney and allows any person to examine the record title evidence. The proponents of this bill argue that the bill is a consumer bill which will allow title insurance to be issued faster and cheaper.

I oppose the bill for the following reasons:

1. The proposed amendments will have no effect on expediency of issuing title opinions. Customarily in North Dakota, once the attorney has evidence of title before him or her, the title insurance commitment will be issued within one to two days. However, the delay involved in most transactions is that the title insurance company must order an abstract from a local abstract company. This process, depending on the location of the real estate, may take anywhere from several days to several weeks. Again, this delay has nothing to do with the attorney who examines the evidence of title.

2. The proposed amendments will have no effect on the cost of title insurance and may actually result in greater cost to the consumer. In North Dakota, attorneys customarily charge between \$75 and \$100 for examining the record title evidence. These fees have not deviated much from the fees that were charged 10 to 15 years ago. The proponents of the legislation may argue that this fee will be less if the title insurance is not examined by an attorney, however, one must anticipate that whomever is examining title will have to charge a fee and it is unlikely that this can be accomplished for a fee much less than what is currently charged.

By eliminating the requirement that a law-trained attorney examine title, North Dakota may find itself actually costing the consumer more money in the form of higher title insurance premiums. Minnesota, for example, does not require the record title evidence to be examined by an attorney prior to issuing title insurance. However, the average cost of an examination of the record title in Minnesota is \$100 to \$130. Further, Minnesota's premiums exceed North Dakota premiums by approximately \$100 to \$125. Thus, an individual purchasing a \$100,000 home and financing that home will currently pay title insurance costs of approximately \$432.50 in Grand Forks, North

Dakota and approximately \$550 for the same title insurance in East Grand Forks, Minnesota for the same coverage. The higher premium rates are associated with the greater risks to insurers in Minnesota because the title is not being examined by a licensed attorney.

3. The proposed amendments will eliminate other benefits realized by North Dakota consumers. North Dakota currently enjoys possibly the lowest title insurance rates in the nation. Coupled with these lower rates, North Dakota consumers enjoy the added benefit of having title to their real estate examined by a law-trained attorney. When the purpose of title insurance is assuring that purchasers of real estate and banks lending money secured by a mortgage to a real estate have good title, it would be hard to argue that it is in the best interest of these consumers to eliminate the requirement that a law-trained attorney examine the title to their real estate.

I have discussed this piece of legislation with local attorneys, bankers and realtors and as of this date find them uniformly opposed to eliminating the requirement that attorneys examine title to real estate.

For the above reasons, I respectfully oppose Senate Bill 2129.

Thank you.