

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1194

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1194

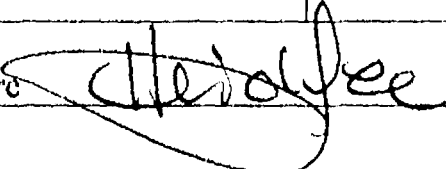
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1194

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 17, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	0-15.04 & 36.45-41.55
Committee Clerk Signature 			

Minutes:

Rep Larry Klemin: **written testimony sponsoring bill.**

Rep Froseth: What documents are necessary to show that the loan was paid off to anybody that received that certificate?

Rep Klemin: We would have two documents. One would be the designation of that agent and the second would be that certificate itself.

Rep Klein: Does this bill address who pays these various fees?

Rep Klemin: No

Rep Ekstrom: Does this bill counter act the land department bill?

Rep Klemin: No and has nothing to do with mortgage.

James Horner: *ND Land Title Assoc.* **Written testimony in favor of bill**

Rep Kelser: Will you, the Title company, have the liability either way?

Horner: Yes

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1194

Hearing Date Jan 17, 2001

Rep Pietsch: Could your company become an agent for these out of state lenders?

Horner: No, we're just the agent of the certificate.

Chuck McKay: *Farm Credit Services* **Written testimony in opposition of bill** We are proposing an amendment and with the amendment we will support the bill.

Chairman Berg: Does this apply only to residential?

McKay: This could apply to any mortgage.

Chairman Berg: Mr. Horner how do you feel about the amendment?

Horner: It causes us no concern.

Chairman Berg: We'll now close the hearing on HB 1194.

Rep Klein: I move to accept the amendments.

Rep Lemieux: I second.

Chairman Berg: All in favor? All opposed? Motion carries.

Rep Ekstrom: I move a do pass as amended.

Rep Klein: I second.

**15 yeas, 0 nays, 0 absent    Rep Froseth Carries**

PROPOSED AMENDMENTS TO HB # 1194

Page 1, line 8, remove "on", and after "lien" insert "governed by the short term mortgage redemption act as provided in chapter 32-19.1 covering"

Date: 1-17-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1194

House Industry, Business and Labor Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number Do 10294.0201

Action Taken Do Pass w/ 7 Amendments

Motion Made By Ekstrom Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstrom	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux	✓	
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 15 No 0

Absent 0

Floor Assignment Froseth

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

**REPORT OF STANDING COMMITTEE (410)**  
January 18, 2001 10:11 a.m.

Module No: HR-08-1190  
Carrier: Froseth  
Insert LC: 10/94.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1194: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING) HB 1194 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "on" with "governed by the Short-term Mortgage Redemption Act as provided in chapter 32-19.1 covering"

Renumber accordingly



2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1194



2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1194

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 21, 2001.

Tape Number	Side A	Side B	Meter #
1	x		53.2 to end
		x	0 to 8.9
2	x		9.6 to 10.9
Committee Clerk Signature <i>Doro E. Perez</i>			

Notes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1194 relating to a certificate of release of a mortgage.

**Representative Lawrence Klemin**, District 47. Co sponsor. Written testimony attached. Intent of the bill is to remedy the situation where a mortgage has been paid off but it is difficult to obtain a formal satisfaction of the mortgage to record with the county register of deeds. This bill will allow the title insurance agent to record a certificate equivalent to a formal satisfaction of the mortgage.

**Senator Espegard**: Would this create a cloud on the title?

**Rep. Klemin**: No, because, page 3 line 26, "certificate operates as release of the mortgage".

**Jim Horner**, ND Land Title Assn., in favor. This is a necessary bill. Written testimony Attached. Urge do pass.

**Senator Mathern**: Do you require proof that the mortgage was really paid?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1194

Hearing Date February 21, 2001.

**J Horner:** Usually we verify money was received.

**Senator Espegard:** Doesn't the consumer still need the release?

**J Horner:** No this would release the mortgage, the consumer would want the note back.

We would require definitive proof payment was made before we issue one of these. Its hard to get payoffs in writing within reasonable time.

**Claus Lembke,** ND Assn. Realtors, Urge do pass.

**Malcolm Brown,** on behalf of State Bar Assn., Real Property Section, in support of this bill.

No opposing testimony. Hearing closed.

Tape 2-A-9.6 to 10.9.

Discussion held. **Senator Espegard:** Motion: do pass. **Senator Krebsbach:** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Mathern.**

Date: Feb 21/01

Roll Call Vote #: /

## 2001 SENATE STANDING COMMITTEE POLL CALL VOTES

**BILL/RESOLUTION NO. 1194**

## Senate Industry, Business and Labor

## Committee

Subcommittee on \_\_\_\_\_

or

☐ **Conference Committee**

Legislative Council Amendment Number \_\_\_\_\_

### Action Taken

Do Pass

**Motion Made By**

Sen Eregard

**Seconded**

By

Sen Krebsbach

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Mathern

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

**REPORT OF STANDING COMMITTEE (410)**  
February 21, 2001 1:46 p.m.

Module No: SR-32-4227  
Carrier: D. Mathern  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1194, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1194 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1194

TESTIMONY OF REP. LAWRENCE R. KLEMIN  
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
HOUSE BILL NO. 1194  
JANUARY 17, 2001

Mr. Chairman and Members of the Committee:

I am Lawrence R. Klemin, Representative from District 47 in Bismarek. I am appearing before you today in support of House Bill No. 1194. HB 1194 is based on law passed in the State of Minnesota in 1995 to address the situation where mortgage loans have been paid off to the holder of a mortgage in the secondary mortgage market, but it is subsequently difficult to obtain a formal satisfaction of the mortgage to record with the County Register of Deeds.

In recent years, mainly with home loans, there has been an expanding market for mortgage documents with investors in mortgages on the secondary mortgage market. Mortgage loans are closed locally, but are then packaged for sale to out of state mortgage bankers. These mortgages are then frequently sold by one mortgage banker to another mortgage banker, often with the servicing of the loan being retained by a totally different entity from the holder of the mortgage.

In the typical loan closing, a local escrow agent, usually an agent for a national title insurance company, handles all aspects of the loan closing, including the payoff of the existing loan. A payoff statement is obtained from the servicer of the loan, and payment is then sent in the amount that is owing. However, it may be months before a formal satisfaction of the mortgage is received from the holder of the mortgage. Sometimes there are complications because the holder of the mortgage has merged with another entity or has gone out of business.

HB 1194 will remedy the problem by permitting the title insurance agent that handled the loan closing and the payoff of the mortgage to record a certificate stating that the mortgage has been paid. This certificate would then be equivalent to a formal satisfaction of the mortgage by the holder of the mortgage. As far as we are aware, this procedure has worked well in Minnesota.

I urge your approval of HB 1194. Thank you very much.

Mr. Chairman and Members of the Committee: House Bill 1194.

My name is Jim Horner, and I am appearing this morning as a lobbyist for the North Dakota Land Title Association.

I am also appearing on behalf of myself as Vice President and part owner of North Dakota Guaranty & Title Company, and as Chairman of the Legislative Committee of the North Dakota Land Title Association. North Dakota Guaranty & Title Company and other members of the North Dakota Land Title Association have escrow and closing companies to facilitate the transfer of real estate and the transfer of the funds involved therein.

I am not going to talk about the particulars of this legislation, but as to the reason why it is necessary.

I would suppose that if I were in your position I would be asking just why is something like this even necessary.

It was only a few years ago when our company did closings for real estate transactions where we would payoff the mortgage of the seller on a particular tract of land involved therein, that we would have the satisfaction of the mortgage within a few days.

However, several years ago it became necessary for lenders to initiate new loans and sell them to secondary markets so that they would have the funds to make more loans. This was and still is great, because now there is an ample supply of funds for borrowers to get at competitive rates.

In working with these secondary markets, who are all over the nation, the vast majority of them are very cooperative, and when they are paid in full for the mortgage that they have purchased, they do issue the satisfaction in a timely manner. However, there are a few of them, that for some reason, just simply refuse to issue satisfactions. Or in the case where a satisfaction was issued, and it was not correct, they will not issue another corrected satisfaction. No matter how many times we call them, or write to them, we do not get any results.

What this bill would do, is to take care of that problem. When we as the closing company have the payoff statement which shows how much money is needed to pay the loan off, and we have the cancelled check for that amount, this would give us, as the appointed agent for the title insurance company to issue a simple certificate or affidavit to that effect, which would then release the lien of the mortgage insofar as that property is concerned. There are a number of requirements that would have to be followed, and any title insurance company would make sure these are all followed, since they would be responsible for any of these documents issued in error by their agent.

I know it is hard to believe that this problem actually exists. Also, the time that is being spent to contact these loan companies is getting very expensive. This is a cost that we as the closing company have to bear the brunt of.

If the mortgage is not satisfied of record, it appears to be an open obligation, and makes any other mortgage after than a junior lien. With the passage of this legislation, the records to real estate could be cleaned up as to paid mortgages. This certificate or affidavit would not be used in every case of a mortgage payoff. There would still be the requests for the satisfactions. This would only be used in the case where the satisfaction would not be obtained within a reasonable period of time.

This bill is similar to the one that is in place in Minnesota. Title insurance agents and closing agents in Minnesota will tell you that this works very well. Lets get the records in North Dakota cleaned up as to these paid mortgages that are not satisfied of record.

I request your strong do pass vote on House Bill 1194.

Thank you very much



Jim Horner



HOUSE BILL 1194

TESTIMONY PRESENTED BY CHARLES MCCAY  
REPRESENTING FARM CREDIT SERVICES

Mr. Chairman and committee members:

Farm Credit Services is one of the larger farm real estate lenders in North Dakota. We retain all of the mortgages that we originate and are careful to release mortgages as required.

We understand that when mortgages are sold into the secondary market the mortgage servicers are not always responsive when requested to release mortgages, and this causes problems for buyers, sellers, lenders and title companies.

During the 1980's we had some experience with radical protest groups using bogus liens and law suits to harass lenders. It is not hard to imagine how easy it would be for this type of group or individual to use a title insurance agent to file bogus releases. Real estate lenders could suffer large losses due to the delays and legal action required to straighten out the mess, as well as losing security for some loans.

We agree that the problem of getting mortgage releases from secondary market servicers requires a solution. We respectfully request that the bill be amended to address only the situations causing most of the problem by limiting third party releases to residential mortgages that are being serviced by someone other than the originating lender.

An amendment to the bill that deletes the word "on" in line 8 and inserts the following language after the word lien on line 8:

"governed by the short term mortgage redemption act as provided in chapter 32-19.1 covering"



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

Representative Lawrence R. Klemin  
District 47  
1709 Montego Drive  
Bismarck, ND 58503-0856

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

COMMITTEES:  
Judiciary  
Government and  
Veterans Affairs

## TESTIMONY OF REP. LAWRENCE R. KLEMIN SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE HOUSE BILL NO. 1194 FEBRUARY 21, 2001

Mr. Chairman and Members of the Committee:

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today in support of House Bill No. 1194. HB 1194 is based on law passed in the State of Minnesota in 1995 to address the situation where mortgage loans have been paid off to the holder of a mortgage in the secondary mortgage market, but it is subsequently difficult to obtain a formal satisfaction of the mortgage to record with the County Register of Deeds.

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## HOUSE BILL 1194

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It was only a few years ago when our company did closings for real estate transactions where we would payoff the mortgage of the seller on a particular tract of land involved therein, that we would have the satisfaction of the mortgage within a few days.

However, several years ago it became necessary for lenders to initiate new loans and sell them to secondary markets so that they would have the funds to make more loans. This was and still is great, because now there is an ample supply of funds for borrowers to get at competitive rates.

In working with these secondary markets, who are all over the nation, the vast majority of them are very cooperative, and when they are paid in full for the mortgage that they have purchased, they do issue the satisfaction in a timely manner. However, there are a few of them, that for some reason, just simply refuse to issue satisfactions. Or in the case where a satisfaction was issued, and it was not correct, they will not issue another corrected satisfaction. No matter how many times we call them, or write to them, WE DO NOT GET RESULTS AND THEREFORE THE CONSUMERS HAVE TITLE PROBLEMS AS TO TITLE TO THEIR REAL ESTATE..

What this bill would do, is to take care of that problem. When we as the closing company do a closing, and we have the payoff statement and proof that we paid that amount, then we as an agent for the title insurance company could issue and record a simple statement in the form of a certificate or affidavit that the mortgage is paid and the lien would be released. There are a number of requirements that would have to be followed, and any title insurance company would make sure these are all followed, since they would be responsible for any of these documents issued in error by their agent.

I know it is hard to believe that this problem actually exists. Also, the time that is being spent to contact these loan companies is getting very expensive. This is a cost that we as the closing

company have to bear the brunt of.

At the present time we have a number of files in our office where we keep trying to get the satisfactions. We paid them off years ago. We have some that go back to 1995.

If the mortgage is not satisfied of record, it appears to be an open obligation, and makes any other mortgage after than a junior lien. With the passage of this legislation, the records to real estate could be cleaned up as to paid mortgages. This certificate or affidavit would not be used in every case of a mortgage payoff. There would still be the requests for the satisfactions. This certificate or affidavit would only be used in the case where the satisfaction would not be obtained within a reasonable period of time.

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Jim Horner

Lobbyist, North Dakota Land Title Association