

2019 HOUSE JUDICIARY COMMITTEE

HB 1251

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1251
1/14/2019
30754

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

Attachments 1, 2, 3, 4

Chairman K. Koppelman: Opened the hearing on HB 1251.

Rep. Louser: Introduced the bill. Went over the property disclosure requirements. The Bismarck/Mandan Realty Board has done a good job of creating on their uniform of for the Purchase that the due diligence period that enumerates all of those things that happen within that certain time frame. In other parts of the state all of those items may come with a time frame. Historically in the legislature we have seen disclosures on the radon. Went over a property conduction statement. (Attachment #1) (2:15-5:10). This bill would require this statement be filled out by the seller. Has an amendment to offer (Attachment #2) Went over the bill and the changes needed. Discussed the realty requirements of the disclosures. This would not be used for private sales. The Real Estate Commission does not regulate private sales. I tried hard to keep this bill simple.

Chairman K. Koppelman: Is there an additional amendment to what you are passing out, a word amendment broker changes?

Rep. Louser: No broker changes in this one.

Chairman K. Koppelman: The potential broker change is where?

Rep. Louser: The potential broker change is on line 21 on page 1. It is the broker's responsibility to maintain records. The broker as opposed to the licensee shall retain the record.

Representative Jones: The commission shall establish? Did you mean to insert the Real Estate Commission?

Rep. Louser: No, I don't think that is necessary.

Rep. Magrum: Why do you have just primary residences fill out this form?

Rep. Louser: It would remain optional for non primary residences.

Rep. Magrum: This does not cover commercial real estate?

Rep Louser: Yes, that is right.

Rep. Magrum: There is no liability to the person filling out the form? What is the buyer's recourse?

Rep. Louser: That is where we have a lot of problems, where the seller doesn't disclose prior problems. The service provider will come and inform the new buyer of the problems that were happening there. There isn't really a way to impose a fine.

Rep. Vetter: Is this mandatory for all residential sales?

Rep. Louser: If the seller refuses to fill out this form then the seller would make a note of this.

Rep. Vetter: Were you going to add radon testing into this?

Rep. Louser: On page 2, line 73 on Seller's Property Condition Statement. That is already on the bill.

Rep. Hanson: Two states currently have it?

Rep. Louser: The adjoining states have that already. Discussed prior regulations such as lead based paint.

Chairman K. Koppelman: What if the seller doesn't know?

Rep. Louser: This is supplemental information that is provided to the buyer and seller.

Chairman K. Koppelman: Reviewed the proposed amendment. This is a hog house amendment. In addition to moving it to a different section.

Rep. Louser: The Association of Realtor's suggested this.

Chairman K. Koppelman: It looked like some of these proposals you discussed are already in the amendment proposal.

Rep. Louser: Yes, I did make those already.

Rep. McWilliams: Lead based paint is currently a federal requirement.

Rep. Louser: They would have a separate proposal.
If the buyer has a concern, they should weigh that on whether to buy the property.

Lisa Feldner, North Dakota Association of Realtors: (Attachment # 3) Offered amendment changes.

Rep. Roers Jones: Do you want it to apply to all sellers and how would you expect private seller know about this?

Lisa Feldner: We would have forms for them to fill out.

Rep. Roers Jones: If you have someone who is a personal representative, would you still have an option for them to sell as is without filling out the disclosure or how do you see that working?

Greg Larson, Licensed Real Estate of Bismarck: (Attachment #4)You can always opt out if you have no knowledge.

Chairman K. Koppelman: If this is expanded to all property owners, should there be some indication that in the statute where they can avail themselves of that form?

Greg Larson: Yes, that should be in the real estate statutes.

Rep. Becker: Earlier it sounded like private sellers could opt out? It doesn't seem like that in the bill. Is there an opt out?

Greg Larson: The disclosure statement is an opt out.

Rep. Vetter: Seller by owner, doesn't that add strength to it? It would further strengthen using an agent because they know everything is covered.

Greg Larson: Yes, we are here to advocate for the home owner. We would rather protect the buyer than gain an advantage.

Rep. Vetter: How does this person know this? They would then be subject to a fine.

Greg Larson: Small claims court already exists.

Chairman K. Koppelman: **Rep. Louser** was saying a seller could refuse to give the information on the form. By requiring it in law can they refuse to do it?

Greg Larson: Right now you can refuse to do it. Once the law passes you do have to do it. You have to fill out the form.

Rep. McWilliams: If this bill passes it would put some teeth into a small claims court.

Greg Larson: Yes, it would.

Chairman K. Koppelman: Further testimony in support of HB#1251? Any testimony in opposition to HB#1251?

Chairman K. Koppelman: We will close the hearing on HB#1251.

Rep. Magrum made a motion to Do Pass on the **Rep. Louser** amendment seconded by **Rep. Jones**.

Voice vote carried.

Rep. Magrum made a motion to Do Pass on HB #1251 as amended seconded by **Rep. Vetter**.

Rep. Becker: Resist the motion. All licensees have to follow the rules by their licensing agency. This is something that is already available, we don't need to mandate it to brokers. If we believe that we are protecting home buyer's then why do we require only people who are selling their primary residences?

Rep. McWilliams: I agree with **Rep. Becker**, if there is no clause behind this and there is no penalty for not doing a disclosure why have it?

Chairman K. Koppelman: The intent is possibly more for the industry.

Rep. Vetter: The seller has the ability to say I don't want to fill out the disclosure.

Rep. Becker: The broker is required to submit this during the transaction. The burden is on the broker.

Rep. Jones: The broker has to present the disclosure to the seller, if he does not fill it out, he makes a notation of that.

Rep. McWilliams: If a broker says that we require all clients to fill this out and the seller did not do this, doesn't this have the same impact as mandating it in law?

Rep. Magrum: I thought that this was a good bill, as the broker has to have them fill out the disclosure.

Rep. Becker: We need to look at the actual bill and it says before the party signing agreement for the sale exchange or purchase of real property, the seller shall make a written disclosure to the perspective buyer. This only applies to primary residences that are going through a broker.

Rep. Paur: The option is in the form not to disclose anything, as to check all unknowns.

Chairman K. Koppelman: Does our current law require any kind of disclosure?

Rep Vetter: The practice is using the disclosure.

Rep. Jones: I withdraw my second to the motion.

Chairman K. Koppelman: **Rep. Magrum** withdraws his motion also. The motion is withdrawn so that leaves the bill before us. What are the wishes of the committee? Would you want to further amend and clarify some of that and do you want time to do that?

Rep. Vetter: I like the language that is used it's just the same. He could repeat it again.

Chairman K. Koppelman: The obligation is on the licensee and the option of the seller is to say that you made the request but I am not going to do it.

Motion by **Rep. Vetter** to move the language on the second line of number 2 in the amended Text after the word "the" insert the word licensee shall request that the. **Rep. Jones** seconded the motion.

Rep. Becker: Would licensee indicate only those that are working with the board of realtors?

Chairman K. Koppelman: Everyone who is allowed to be a real estate salesperson or agent has to be licensed.

Rep. Vetter: Technically I am a realtor even though I am an appraiser. It means that to be a member of the MOS (Months of Supply) you have to be a realtor.

Rep. Satrom: The licensee is actually talking about the real estate agent and not the broker. It might be good to run it past some of the professionals to make sure we are not messing something up.

Chairman K. Koppelman: We have a motion on the floor to amend, so we can just suspend action at this point with that motion on the floor. **Rep. Vetter** will look into whether that language suffices. We will come back tomorrow to HB#1251.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1251
1/14/2019
30839

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

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Chairman K. Koppelman: Reopened the meeting on HB 1251.

Held action on bill

Rep. Vetter: There is no penalty if disclosure is not filled out. But the buyer will probably not buy the property. This only deals with prime residency. I think this is a good bill.

Chairman K. Koppelman: The amendment that Rep. Louser brought has been moved and passed on the bill so the current status is that we have that on the bill.

A motion for Do Pass was made by **Rep. Vetter** and seconded by **Rep. Paur** for the amended bill.

Rep. Magrum: I thought that the owner was not required to fill out this form, but it was the real estate agent.

Chairman K. Koppelman: It is the seller that fills it out. The law that we would pass would require that the seller fill out the form.

Rep. Becker: If you choose to use an agent, you have to fill it out. It is still the sellers responsibility to fill it out.

Chairman K. Koppelman: There is no penalty, but if you tell the seller he has to fill it out, and tell the seller that it is the law, chances are they will.

Rep. Paulson: My understanding that it would apply in 75% of cases.

Rep. Jones: As time goes on people learn that these things are out there.

Rep. Simons: Shouldn't people educate themselves?

Rep. Vetter: I think these disclosures are very important.

Rep. Paulson: I like the amendment.

Chairman K. Koppelman: Any further discussion?

Roll Call Vote was taken. Yes 8 No 6 Absent 0 HB#1251 passed.

Rep. Vetter is the Carrier.

DP 1/15/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to property disclosure requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-10 of the North Dakota Century Code is created and enacted as follows:

Property disclosure - Requirements.

1. This section applies to a transaction for the sale, exchange, or purchase of real property if:
 - a. A real estate broker, real estate assistant broker, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
 - b. The real property is an owner-occupied primary residence located in this state being sold or exchanged by the owner.
2. Before the parties sign an agreement for the sale, exchange, or purchase of real property, the seller shall make a written disclosure to the prospective buyer. The written disclosure must include all material facts of which the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. The seller shall make the written disclosure in good faith and based upon the best of the seller's knowledge at the time of the disclosure.
3. Following the sale, exchange, or purchase of real property, the brokerage firm shall retain a copy of the written disclosure completed and signed by the seller and signed by the prospective buyer. The brokerage firm's duties under this section do not supersede any other common law or statutory duties.
4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations."

Renumber accordingly

Date: 1-14-19
Roll Call Vote #: 1
HB 1251

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1251

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Lower Amend 19,0067.01001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Magnum Seconded By Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magnum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote
Vote
Carried

Date: 1-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

HB 1251

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By VEtter Seconded By PAUR

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		<input checked="" type="checkbox"/>	Rep. Buffalo	<input checked="" type="checkbox"/>	
Vice Chairman Karls	<input checked="" type="checkbox"/>		Rep. Karla Rose Hanson	<input checked="" type="checkbox"/>	
Rep. Becker		<input checked="" type="checkbox"/>			
Rep. Terry Jones	<input checked="" type="checkbox"/>				
Rep. Magrum		<input checked="" type="checkbox"/>			
Rep. McWilliams		<input checked="" type="checkbox"/>			
Rep. B. Paulson		<input checked="" type="checkbox"/>			
Rep. Paur	<input checked="" type="checkbox"/>				
Rep. Roers Jones	<input checked="" type="checkbox"/>				
Rep. Satrom	<input checked="" type="checkbox"/>				
Rep. Simons		<input checked="" type="checkbox"/>			
Rep. Vetter	<input checked="" type="checkbox"/>				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Vetter

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

REPORT OF STANDING COMMITTEE

HB 1251: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1251 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to property disclosure requirements.

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4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations."

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1251

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1251 am
3/5/2019
Job #33185

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

Att. #1-5

Chairman Klein: Opened the hearing on HB 1251. All members were present.

Representative Louser, District 5: Introduced the bill. (See attachments #1-2) What this bill does is make that document mandatory. What this does is you ask the seller to fill this out and then we give it to the buyer. It isn't similar to the Minot-Bismarck 2011 flood. Fargo and Grand Forks, the one issue that keeps coming up is Radon in Grand Forks. This bill says that the areas that have to be disclosed are latent defects, general condition, environmental concerns, structural, and mechanical. These are all issues that are in the bill now. Latent defects are known but covered up by the seller. Something the seller knew and covered that the buyer couldn't see. By passing this legislation we're not going to see these one off issues come up every session and we had one in the House this year, a mandatory Radon disclosure. HB 1372 and it failed after 1251 passed, 0-91. The prime sponsor of 1372 got up and said because we passed 1251 we don't need 1372. My concern with the legislature continuously getting involved is the legislature's involvement in the industry and people from the industry constantly coming to argue over certain issues that can be covered in this document. Lead based paint, the EPA removed lead from paint in the 70s, now it tells people that are qualified to buy a home or have been living in their home for a long time, the dangers of eating something that isn't food. Right now we have a federal requirement that says don't eat paint chips, and I don't want additional requirements like that to fall into place and we can cover that with one of these disclosures. Black mold is another concern. There are over 1 million forms of black mold. Every house has mold in it of some form. But if we got scared into doing mold disclosures on every house, that would be a nightmare to have to disclose all of that. Last session we had a bill for mandatory carbon monoxide detectors, that passed both the house and the senate and the governor vetoed it. If we ever got to a point where we wanted to have mandatory carbon monoxide detectors, we could monitor that in this type of disclosure by asking if there is one on the property and is it working. The question is gonna come up why not include private sales? It's my feeling that the real estate association, the realtors, across the state are not in the business of providing services to those that choose not to use the real estate industry's services. So if they choose to do a private sale, it isn't for

the association of realtors to provide access to our multiple listing service, etc. Private sales are not regulated by anyone, they are not monitored and they are not audited. Also, I don't know how we would ever get the word out to every private seller that they need to abide by this law. Every brokerage gets audited every year, we have to explain who we represent. The auditors say yes or no it was in the disclosure. It's my feelings that the realtor's association are not in the business of providing services to people who do not abide by our rules. This bill was presented last session with the Radon, but when we got into the house committee which was in judiciary, there was testimony that said that they supported the bill with some changes to include private sales and I opposed that. I talked to appraisers, lenders, underwriters, consumers, how do you feel about having these disclosures? This isn't a bill that was generated by the industry it was generated by me a legislator who works within the industry.

Senator Piepkorn: Do you have any of this in written testimony?

Representative Louser: I'll get one to you.

Chairman Klein: So we have before us the option to require a disclosure statement rather than have it be something that the realtors have used in the past? But now we're gonna legislature that you use a disclosure statement. And that disclosure statement would only be required if you're a real estate agent?

Representative Louser: Not everybody that has a real estate license is a realtor. For example, Devils Lake does not have a board of realtors, they have licensees. They are not formed that way but they do have a real estate license so the association of realtors would have a generic form for licensees that are not members of the association. With that explanation, anybody that is using a real estate professional that has a license for the sale of their primary residence owner occupied, this would be required. For a private sale this would not be required nor audited or regulated

Chairman Klein: The reason we're looking at doing it as a mandatory statement is what?

Representative Louser: I'm overly concerned about continuous bills that come in and say because of my experience in the one sale I had, I think everybody should have, in this case a Radon disclosure, which is gonna add a Radon inspection and interpretation of the property. That's just one example.

Chairman Klein: Your thought is if we have a common form we won't have carbon monoxide bills every session because it will already have to be disclosed on the form that we mandated in bill 1251 in 2019?

Representative Louser: That's right. I would like that to be the answer every time a bill like that comes into the session. And it puts a group of real estate professionals in a difficult position to come in and testify against a Radon bill if the group feels like that isn't something they want to mandate. This is a much easier form that we're familiar with and we can say don't put that as a mandate on all of the property sales in North Dakota, we can just include it on our local disclosure form that's already in place.

Chairman Klein: But also mandate it?

Representative Louser: If there is ever a dispute, the courts would request this document, who said what? Did the buyer acknowledge that they bought a house that never had water in the basement? If the seller said we've never had water, then you've got a document that says, this is what the seller said and now the buyer has to prove them wrong.

Senator Roers: This seems like it would be a heyday for the legal profession. Because now you have law that dictates what you must and must not do, and if whatever it is happens to develop into a lawsuit, you're gonna be named on that lawsuit as a realtor as well as the seller. Would you agree or disagree?

Representative Louser: In 2005 we passed law that absolved any real estate professional from when a buyer or seller does not tell the truth unless the licensee knew or should have known to protect those that are not part of fraud. I can give two examples, in 2004, the house was vacant and I represented the buyers. The house was extremely cold and we called the furnace inspector. We found with everybody involved, when it was determined that the furnace had to be replaced. The selling agent told my buyers that the sellers would replace the furnace, but he was not authorized to say that. 2nd example, the new buyers came home and said our house flooded from this rain storm. The seller said they had not had water in the basement, the babysitter said that house always floods, I used to babysit for them. That should not implicate the listing agent who never knew that. Current statute in North Dakota protects the consumer and the lending agent.

Senator Roers: I'll agree to disagree.

Senator Piepkorn: What happened in the first example?

Representative Louser: They tried to have the buyers and me as an agent pay for it but the selling agent ended up paying for the majority of the furnace.

Senator Kreun: Are all of these forms the same or something that someone designs specific to a certain area?

Representative Louser: Right now that is the case. Although the association of realtors across the state is made up of local boards and associations that are in communication with each other constantly including quarterly meetings. They will be way out in front of this if it looks like Radon is going to be an issue, these forms get changed and updated constantly, usually in the Bismarck market and then shared with other associations.

Senator Kreun: Is there a form that covers all of this?

Representative Louser: That was written specifically to include issues latent defects, general condition, environmental, structural, and mechanical.

Chairman Klein: Would you say in today's environment, how often are you using this form?

Representative Louser: Over 90% of the time.

Chairman Klein: Do you think other people throughout the state are using this?

Representative Louser: I'd say about 90% as well. This was brought up as a way to curb all of the other single issue disclosures, and it worked in the house.

Tricia Schlosser, North Dakota Association of Realtors: see attachment #3 for testimony in support.

Tricia testified on behalf of Gloria Palm Connor, North Dakota Association of REALTORS: see attachment #4 for testimony in support of the bill.

(37:15)Vice Chairman Vedaa: You said the buyer it's their responsibility to get a home inspection? Is that required?

Tricia: Yes. It is not required but its highly recommended.

Vice Chairman Vedaa: If I was buying a home and this was required by the state, they basically said everything was good, I would go with this and then if they were lying to me I could go back on this and say I don't need a home inspection because they already told me everything was good. Could that happen?

Tricia: Absolutely, but most people want to verify. The disclosure statement that you have in front of you, when the buyer signs that, they are agreeing that they agree with everything on it. It's up to them to verify.

Senator Burckhard: What is the amendment and why do we need it?

Tricia: Would take essentially take #1 and say that this section would apply to a transaction for the sale exchange or purpose of residential real property and it would exclude A and B under that. The amendment is saying that its applying to all residential real property which is 1-4 units used for residential purposes. And that it doesn't matter if a licensee is involved or not, it is for all consumers.

Vice Chairman Vedaa: You're saying that the seller is not going to have a realtor, so then who would be required to keep this and how do we know that they could go back on it?

Tricia: No one, there is not a title company or a closing company that would be liable for that. It would be handled just like it is now. If you were a private seller and you did not provide a disclosure, and that buyer can prove that there is some defect that you knew about, and they sue you, that is when this would come into play. At that point the judge is going to ask where is your written disclosure. Judges are already doing that now, and that's how they are enforcing it based on that 1985 court case.

Vice Chairman Vedaa: So the buyer would be required to hang on to this?

Tricia: Yes.

Chairman Klein: Have we had many cases of this happening?

Tricia: I can only speak for my company, in our 41 years, in 2018 we had four calls from buyers who asked to speak with the sellers about defects that they may have previously known about and is now causing us issues. We communicate with the seller and ask did you know about this, did you mitigate this? Of those four, two ended up in small claims court. One was over the \$15,000 threshold, but the buyer couldn't afford the attorney which was \$17,000 in damages, but she did win that because she could prove that the seller did indeed know about this. That was a pretty clear cut case because she had hired, coincidentally, the same contractor that had previously done work in the same house. In our firm we first try to work it out between a buyer and a seller and see if they will setting something.

Chairman Klein: But in that case, you had your form all filled out sitting in the cabinet anyways, your comment was most licensees are doing it now and so we're just trying to extend this to those that are doing this on their own?

Vice Chairman Vedaa: When this is filled out by the seller, is it shared with the home inspector? And then afterwards they compare the two documents?

Tricia: Best practice would be to have the inspector look over the disclosure statement and pay extra attention to the issues mentioned. The buyer is not holding the seller liable for things that they did not know.

(46:00)Jeanne Prom, North Dakota Real Estate Commission: see attachment #5 for neutral testimony.

(49:00)Chairman Klein: Do you get tied up in many complaints now?

Jeanne: In 2018 we had 20 complaints, and that was higher than usual.

Chairman Klein: And the complaints are buyer seller related or similar or all kinds of different reasons?

Jeanne: Some of those complaints are generated by the commission because brokers or a license salesperson is not following the law for example related to continuing education requirements or trust funds and handling of money but some are driven by the consumer. Generally, it is because they feel they weren't given a fair deal.

Vice Chairman Vedaa: What does it take to be a home inspector?

Jeanne: I can't answer that.

Representative Louser: It used to be nothing, home inspectors now have to register with the secretary of state, carry insurance, be a member of a national organization and pass the test that that organization provides.

Chairman Klein: In the testimony that Tricia gave us, she mentioned that Minnesota and South Dakota have further reaching laws?

Representative Louser: MN is regulated by secretary of commerce, SD and North Dakota are regulated by the real estate commission which are five members appointed by the governor.

Senator Burckhard: Are you familiar with the amendments and do you think we need them?

Representative Louser: I oppose that amendment.

Senator Roers: We were talking two separate amendments right? One was to include all real estate sales and the other is to have this under section 43.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1251 pm
3/5/2019
Job #33255

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on HB 1251. All members were present.

Chairman Klein: It seems like the only groups that aren't already doing this are the ones he doesn't want to include. And the only way to get the buy in from this other organization is to include the person to person non-realtor sales. See attachment #1 for emailed remarks from Representative Louser.

Vice Chairman Vedaa: Wasn't there an amendment on this?

Chairman Klein: Louser was not working on amendments. His organization was working on amendments, as did Jeanne Prom's realtor commission.

Senator Roers: We did visit with Louser, he was going to put in an amendment that he put under the care and custody of Jeanne Prom. He was gonna do that but he was not going to put an amendment that brought non-realtors under the requirement. He did also mention that 6 months to a year ago he had the realtors' support but now they've kind of backed up on him.

Vice Chairman Vedaa: I was thinking about this non-realtor thing also. If I'm buying my friend's house we know that there is nobody else involved. So I just hate to put another piece of paper in between them.

Chairman Klein: And how would the two of us know that we needed on to begin with? What troubles me is they're doing it. Over 90% are already filling out the sheet and now we're gonna put it in the code.

Senator Burckhard: Didn't he say he was filing this for a constituent?

Senator Roers: No, it was someone who had an issue with the disclosure form.

Senator Burckhard: But he didn't like the amendments or they weren't his or something.

Senator Kreun: If you two are buying your own home you can write up any agreement you want, so it just doesn't make sense.

Senator Roers: As it relates to the bill not the amendments, I asked why would you want to do this because it encumbers you to a much higher level of exposure when it comes to being sued. His answer to me was in 2005 the legislature passed some law that excluded them from frivolous claims. He still seemed pretty comfortable with it. I tried to impress upon it that it was unnecessary.

Chairman Klein: I'm not supportive of it but if somebody wants to go out and draft some amendments, the realtor folks don't seem excited about it, I think the only person that's going to be really unhappy about it is Representative Louser.

Senator Burckhard: In the comments I emailed out, he's saying it would all but eliminate all of the additional requirement bills that are brought to us session after session. In his opinion this bill comes to us pretty often?

Chairman Klein: Well you can recall we had the carbon monoxide indicators last time, I think we mushed that down to almost nothing and the governor still vetoed it. I don't think it really matters what we pass, if somebody somewhere feels wronged, they're gonna make a fuss about it.

Vice Chairman Vedaa: The why I understand it, the different cities' real estate associations can make their own disclosure forms?

Chairman Klein: The real estate association would establish their own disclosure form meeting the requirements of that section, the key requirements are the latent defects, the general conditions, and the environmental issues would have to be somewhat included.

Senator Kreun: Do we need to wait for his amendment?

Chairman Klein: I'm just gonna adjourn today so if anybody else wants to work on an amendment they can do that.

Chairman Klein: adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1251 am
3/6/2019
Job #33259

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on HB 1251. All members were present.

Chairman Klein: As you'll recall there was mention of a couple of proposed amendments, one dealt with including everyone in this, the other one dealt with the real estate commission section. However, Representative Louser has brought to my attention that the amendment he brought forward is supposed to say associate broker instead of assistant broker. (See attachment #1 for proposed amendment).

Senator Burckhard: Move to adopt amendment.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Chairman Klein: I just want to be up front that I am not supporting this bill. What I listened to yesterday, was that this is an individual who brought the bill looking for the support of the industry. The other two bills that we handled were industry bills with the support of the legislators. It seemed to me, the industry wasn't supportive of the way this bill was written. They like it, sort of but they want their own changes. The sponsor of the bill doesn't want those changes and likes it the way it was written. I heard that 90% of the real estate brokers are already using a form of this and now we are just mandating this.

Senator Kreun: Did I understand that this is the one we are more or less putting together for a competitor friend?

Senator Burckhard: Yep.

Senator Kreun: Is that competitor friend a member of this association? My understanding was probably not?

Chairman Klein: Whatever happens, whether you've got all the check marks checked or not, there's litigation. Somebody didn't check something right or something.

Senator Kreun: In the other two bills, it was extremely important that it was a member of their association that was gonna follow the rules and the checked boxes and all that. So this in my mind almost becomes counteractive to the other two bills. Is my thinking correct or not? They were adamantly in support of their association so if this individual is not a member of the association then the bills are opposing each other.

Chairman Klein: Well I thought it interesting too, that Representative Louser may have been on board, and then they weren't on board and then they were off and on again up until their conference call that they had last week and he couldn't hear the vote so he was not sure.

Senator Roers: Senator Kreun even though he refers to a friend, I think it's really his bill and he really wants this to go through.

Senator Burckhard: My notes would suggest there was no opposition to the bill? They didn't seem to care?

Chairman Klein: You could suggest that, but if you read the testimony from the association, they like it but it has to include everyone otherwise they don't like it. And the emails you may have gotten today which I received too, both suggested, it's a good idea but you have to make sure everybody is included.

Senator Burckhard: He said private sales are not regulated or effected by this bill, in my notes. It's a confusing bill to me too.

Vice Chairman Vedaa: There's got to be a lot of things in real estate that don't apply to an individual seller, just selling a home to a buyer and not using a realtor. I don't know why this is so important that they have that disclosure form for the individual seller to buyer thing. It's to protect Representative Louser, and the seller. And you've got something in writing, so when you're standing there in that dwelling, you can compare the disclosure form to the inspection. Before maybe it was forgotten to mention that there was water in there once.

Senator Piepkorn: The testimony from Jeanne Prom was mutual but raised a lot of questions as well. And we did get a lot of emails as well from people that wanted to include the private party sales.

Senator Roers: Did he provide an amendment to add in another amendment to add in the private sales or not?

Chairman Klein: No, the amendment we just voted on was the only amendment he had and that was to be included in section 43, the comment that Jeanne Prom made that it should be included in that section. Adjourned the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1251 pm
3/6/2019
Job #33275

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

None.

Chairman Klein: Opened the committee work session on HB 1251.

Vice Chairman Vedaa: Moved a Do Pass as Amended.

Senator Burckhard: Seconded.

Chairman Klein: I think we've probably had a lot of discussion on this one already.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Burckhard will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1251
3/6/2019
Job #33350

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to property disclosure requirements.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on HB 1251.

Vice Chairman Vedaa: Moved to reconsider HB 1251.

Senator Roers: Seconded.

A voice vote was taken: motion carried.

Chairman Klein: The new amendment changes it to associate broker. (See attachment #1 for proposed amendment).

Senator Roers: Moved to Approve the Amendment.

Senator Kreun: Seconded.

Vice Chairman Vedaa: Does this eliminate amendment 02001?

Chairman Klein: Yes, we are now superseding 02001 with 02002.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Vice Chairman Vedaa: Moved a Do pass as amended.

Senator Burckhard: Seconded.

Senator Piepkorn: This doesn't really change the bill as far as I can see? It's just a little bit of verbiage?

Chairman Klein: Yes, it's just changing a word.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 0 absent.

Motion Carried.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1251

Page 2, after line 7, insert:

"5. If a real estate broker, real estate assistant broker, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1."

Renumber accordingly

86
316
1001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1251

Page 1, line 9, remove "assistant"

Page 1, line 9, after the second "broker" insert "associate"

Page 2, after line 7, insert:

"5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 19.00167.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Burckhard Seconded By Wiers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: changing assistant to associate

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Wada Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein		X	Senator Piepkorn		X
Vice Chairman Vadaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Burckhard

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

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1251**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: Voice vote

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐ _____

Motion Made By Vedaa Seconded By Kreun

Senators	Yes	No	Senators	Yes	No
Chairman Klein			Senator Piepkorn		
Vice Chairman Vedaa					
Senator Burckhard					
Senator Kreun					
Senator Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 19.0067.02002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Roers Seconded By Kneun

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: 02002

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1251**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vedaa Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein		X	Senator Piepkorn		X
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Burckhard

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

REPORT OF STANDING COMMITTEE

HB 1251, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1251 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "assistant"

Page 1, line 9, after the second "broker" insert "associate"

Page 2, after line 7, insert:

"5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1."

Renumber accordingly

2019 TESTIMONY

HB 1251



SELLER'S PROPERTY CONDITION STATEMENT (to be completed by SELLER)

71
HB 125
1-14-19
Case 1

Property Address _____

Date _____

The seller authorizes the Brokers or Salespersons to provide the following information to prospective Buyers. **THIS IS NOT A WARRANTY OR GUARANTEE OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PARTY(S) AND IS NOT A SUBSTITUTE FOR INSPECTIONS OR WARRANTIES THE PARTY(S) MAY WISH TO OBTAIN.** Information presented in this form is not intended to be part of any contract between Buyer(s) & Seller(s). BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE &/OR INSPECTIONS OF THE PROPERTY.

Please use the comments section located on pages 2 and 3 to provide further explanation.

I. GENERAL INFORMATION:

- When did you purchase or build the home? _____
- Have you lived in this home for the past 12 months? Yes _____ No _____
- Has the structure been altered? (i.e. additions, altered roof lines, changes to load bearing walls) Yes _____ No _____ Unknown _____
- If yes, please specify what was done, when and by whom (owner or contractor) _____

UNK = Unknown N/A = Not Applicable

II. STRUCTURAL INFORMATION:

- | YES | NO | UNK | N/A | Do any of the following property conditions exist or have they existed? Give details to any question answered yes. |
|--------------------------|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is there, or has there been, basement water seepage, sewer back up, and/or dampness? Explain amount, location, and frequency. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have waterproofing repairs, if any, been made? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Type of basement/foundation. (Circle One) (brick, concrete block, concrete poured, stone, Styrofoam, wood, other) If other, Explain: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there cracked or bulged floors or walls in the basement? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is drain and/or sump pump installed and working properly? If yes, where does it drain to: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are all structures located within the boundaries of the property? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was the structure moved to this site? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there cracks in the driveway, garage floor, sidewalks, patio, retaining walls, or other outside hard surface areas? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Does the roof leak? Has there been interior damage from condensation or ice buildup? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Has there been damage to the roof or shingles? If so, when? Explain: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are you aware of dry rot in the building? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have you performed work upon the property within the last 5 years which require a building, plumbing, electrical or other permits? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was a permit obtained? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was the work approved by an inspector? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Has the property or its improvements been damaged? (Circle all applicable) (i.e. fire, smoke, wind, floods, hail, snow, broken water line) If yes, was the damage repaired? Explain: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Do rain gutters and downspouts work? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have damage claims been paid to you by insurance coverage? If yes, explain: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are the exterior and interior locks operable? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Will keys be provided for each? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are all the window screens available? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there damaged screens? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are all the storm windows available? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there broken windows or broken seals? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are skylights in working conditions? (i.e. no leaking, condensation, or mechanical malfunctioning) _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is the fireplace, woodburner, chimney, or flue in working order? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Has the fireplace/woodburner/chimney/flue been cleaned? If yes, when? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there additional property conditions that have not been described above? (i.e. slanted floors, sticking windows, settling, distorted door frames, sagging ceilings, siding irregularities, stained or damaged floor coverings) _____ |

III. WATER & SEWER SYSTEMS:

- | YES | NO | UNK | N/A | Do any of the following property conditions exist or have they existed? Give details to any question answered yes. |
|--------------------------|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is there a water well(s) on the property? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | What is the source of household water? (Circle One) (city, well, rural) _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | What is the type of sewer system? (Circle One) (i.e. city, septic tank & drain field) _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have you had problems with tree roots, collapsed lines or back up, or similar problems with sewer/septic systems? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is there a sprinkler system and is it in working order? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Do you know the flow rate or capacity of the well? If yes, what is it? _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Has the well water been tested? Test results attached? Yes _____ No _____ Comments: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Contaminated well: Is there a well on the property containing contaminated water? _____ |

#1
HB1251
1-14-19
page 2
answered yet.

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Property Address _____

(Important for faxing and copying the form)

#1
H01251
1-14-19
page 3

	Not Incl	Working	Not Working	Unk	N/A		Not Incl	Working	Not Working	Unk	N/A
133 Electrical Systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Window Air Conditioner(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
134 Plumbing Systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Heater(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
135 Plumbing Fixtures/Mechanisms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Treatment Systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
136 Garage Door Openers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Window Treatments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
137 Garage Door Controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Woodburning Stove	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
138 Garage Door Auto Reverse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Satellite Dish	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
139 Washer/Dryer Hookups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Septic Tank	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
140 Attic Fan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
141 Exhaust Fan(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
142 Antenna & Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
143 Door Bells	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

146 Comments re line # _____
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154 Are there unpaid bills for labor, services or material for construction of improvements,
 155 alterations or repairs to the property? (Check One) Yes ___ No ___
 156 Were any part of such labor, services, or materials performed or placed within the last six months? (Check One) Yes ___ No ___
 157 Comments: _____

160 _____
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163 **ACKNOWLEDGEMENTS:**

164 The Seller hereby acknowledges that the information provided in this document is true and accurate to the best of Seller's
 165 knowledge as of the date listed below. This information is based upon Seller's actual knowledge and, unless specifically
 166 stated otherwise in writing, upon the Seller's period of ownership of the property. If any of the information becomes
 167 inaccurate after it is delivered to the Buyer and before closing, the Seller shall notify the Buyer and any real estate licensee
 168 representing any party to the transaction in writing of such change.

170 **Seller acknowledges receipt of a copy of this document.**

172 Seller: _____ Date: _____ Seller: _____ Date: _____

174 At the time of acceptance of Purchase Agreement:

175 ☐ No change in property condition. Date: _____ Seller: _____
 176 ☐ Changes are noted and initialed. Date: _____ Seller: _____

178 The Buyer/Prospective Buyer acknowledges receipt of this Property Condition Statement. Listing Broker and Agents make
 179 no representations and are not responsible for any conditions existing in the property. The Buyer acknowledges that Buyer
 180 has been advised to verify the information listed in this statement independently. **THE BUYER ACKNOWLEDGES AND**
 181 **UNDERSTANDS THAT THIS DOCUMENT IS NOT INTENDED TO BE A WARRANTY OF ANY KIND OR A**
 182 **SUBSTITUTE FOR ANY INSPECTION OF THE PROPERTY THE BUYER MAY WISH TO OBTAIN.**

185 Buyer _____ Date _____ Buyer _____ Date _____

January 9, 2019

#2
HB1251
1-14-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1251

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to property disclosure requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-10 of the North Dakota Century Code is created and enacted as follows:

Property disclosure - Requirements.

1. This section applies to a transaction for the sale, exchange, or purchase of real property if:
 - a. A real estate broker, real estate assistant broker, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
 - b. The real property is an owner-occupied primary residence located in this state being sold or exchanged by the owner.
2. Before the parties sign an agreement for the sale, exchange, or purchase of real property, the seller shall make a written disclosure to the prospective buyer. The written disclosure must include all material facts of which the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. The seller shall make the written disclosure in good faith and based upon the best of the seller's knowledge at the time of the disclosure.
3. Following the sale, exchange, or purchase of real property, the brokerage firm shall retain a copy of the written disclosure completed and signed by the seller and signed by the prospective buyer. The brokerage firm's duties under this section do not supersede any other common law or statutory duties.
4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations."

Renumber accordingly

#3
HB1251
1-14-19



House Judiciary Committee
January 14, 2019

Support of HB 1251

Good morning Mr. Chairman & Member of the Judiciary Committee,

I am Lisa Feldner, representing the North Dakota Association of Realtors. The association supports this bill with one change. After much discussion of the board and the government affairs committee believes there should be property disclosure requirements for all sellers.

By broadening the scope to all sellers, the association would offer a few changes to the bill.

Lines 1 and 4: Change 43 to 47. This changes from the licensee section of code to the general real estate chapter.

Line 9: Delete subsection a. which refers to the real estate agent or licensee

Line 21: Replace licensee with broker

Page 2, line 1: Replace licensee with broker

Mr. Chairman, there are several members of the ND Association of Realtors here who would be happy to answer any questions specific to real estate practices.



North Dakota Association of REALTORS

#4
HB1251
1-14-19

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

TESTIMONY IN FAVOR OF HB 1251 HOUSE JUDICIARY COMMITTEE

Chairman Koppelman and Members of the House Judiciary Committee, for the record, my name is GREG LARSEN and I represent the North Dakota Association of REALTORS®.

The North Dakota Association of REALTORS® is a 501 (c)6 non-profit professional business organization with more than 1,900 REALTOR® members and more than 200 (218) Business Partner members, such as employees of financial and title companies, etc. Our state membership represents 80% of the approximately 2,350 license holders in ND, some of which are out-of-state or reciprocal licenses. The North Dakota Real Estate Commission is the professional licensing board for real estate licensees in North Dakota.

Our Government Affairs Committee did look at the proposed legislation by Representative Scott Louser, who is also a REALTOR member of ours last spring. At the summer meeting they did take position to support property condition disclosure in concept. After several meetings in the last few weeks they still support property condition disclosure but feel it should be on all residential sales not just sales that a licensee is involved in. By practice our members do strongly encourage the use of property condition statements and also request they be completed when working with a for sale by owner (FSBO) transaction and have had very little if no pushback.

In looking at the surrounding states of South Dakota and Minnesota, that already have mandatory property condition disclosure, it is for all residential sales. In Minnesota it was the REALTOR Association who drafted the language and brought it forward.

I would be happy to answer any questions you may have. A number of our members are also here.





SELLER'S PROPERTY CONDITION STATEMENT (to be completed by SELLER)

HB 1251 3/5/19 ATT#1 y.1



1 Property Address _____ Date _____
 2 The seller authorizes the Brokers or Salespersons to provide the following information to prospective Buyers. **THIS IS NOT A WARRANTY OR**
 3 **GUARANTEE OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PARTY(S) AND IS NOT A SUBSTITUTE**
 4 **FOR INSPECTIONS OR WARRANTIES THE PARTY(S) MAY WISH TO OBTAIN.** Information presented in this form is not intended to be part
 5 of any contract between Buyer(s) & Seller(s). BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE &/OR
 6 INSPECTIONS OF THE PROPERTY.

7
 8 Please use the comments section located on pages 2 and 3 to provide further explanation.

I. GENERAL INFORMATION:

9 When did you purchase or build the home? _____
 10 Have you lived in this home for the past 12 months? Yes _____ No _____
 11 Has the structure been altered? (i.e. additions, altered roof lines, changes to load bearing walls) Yes _____ No _____ Unknown _____
 12 If yes, please specify what was done, when and by whom (owner or contractor) _____
 13

14 UNK = Unkown N/A = Not Applicable
 15

II. STRUCTURAL INFORMATION:

YES	NO	UNK	N/A	Do any of the following property conditions exist or have they existed? Give details to any question answered yes.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is there, or has there been, basement water seepage, sewer back up, and/or dampness? Explain amount, location, and frequency. _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have waterproofing repairs, if any, been made? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Type of basement/foundation. (Circle One) (brick, concrete block, concrete poured, stone, Styrofoam, wood, other) If other, Explain: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are there cracked or bulged floors or walls in the basement? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is drain and/or sump pump installed and working properly? If yes, where does it drain to: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are all structures located within the boundaries of the property? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Was the structure moved to this site? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are there cracks in the driveway, garage floor, sidewalks, patio, retaining walls, or other outside hard surface areas? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does the roof leak? Has there been interior damage from condensation or ice buildup? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has there been damage to the roof or shingles? If so, when? Explain: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of dry rot in the building? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you performed work upon the property within the last 5 years which require a building, plumbing, electrical or other permits? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Was a permit obtained? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Was the work approved by an inspector? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has the property or its improvements been damaged? (Circle all applicable) (i.e. fire, smoke, wind, floods, hail, snow, broken water line) If yes, was the damage repaired? Explain: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do rain gutters and downspouts work? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have damage claims been paid to you by insurance coverage? If yes, explain: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are the exterior and interior locks operable? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Will keys be provided for each? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are all the window screens available? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are there damaged screens? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are all the storm windows available? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are there broken windows or broken seals? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are skylights in working conditions? (i.e. no leaking, condensation, or mechanical malfunctioning) _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is the fireplace, woodburner, chimney, or flue in working order? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has the fireplace/woodburner/chimney/flue been cleaned? If yes, when? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Are there additional property conditions that have not been described above? (i.e. slanted floors, sticking windows, settling, distorted door frames, sagging ceilings, siding irregularities, stained or damaged floor coverings) _____

III. WATER & SEWER SYSTEMS:

YES	NO	UNK	N/A	Do any of the following property conditions exist or have they existed? Give details to any question answered yes.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is there a water well(s) on the property? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	What is the source of household water? (Circle One) (city, well, rural) _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	What is the type of sewer system? (Circle One) (i.e. city, septic tank & drain field) _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you had problems with tree roots, collapsed lines or back up, or similar problems with sewer/septic systems? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is there a sprinkler system and is it in working order? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do you know the flow rate or capacity of the well? If yes, what is it? _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has the well water been tested? Test results attached? Yes _____ No _____ Comments: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contaminated well: Is there a well on the property containing contaminated water? _____

66

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Seller's Property Condition Statement – Page 3

Property Address.

(Important for faxing and copying the form)

[illegible]

146	Comments re line #
147	
148	
149	
150	
151	
152	

154 Are there unpaid bills for labor, services or material for construction of improvements,
155 alterations or repairs to the property? (Check One) Yes ____ No ____
156 Were any part of such labor, services, or materials performed or placed within the last six months? (Check One) Yes ____ No ____
157 Comments: _____
158 _____
159 _____
160 _____
161 _____

163 **ACKNOWLEDGEMENTS:**

164 The Seller hereby acknowledges that the information provided in this document is true and accurate to the best of Seller's
165 knowledge as of the date listed below. This information is based upon Seller's actual knowledge and, unless specifically
166 stated otherwise in writing, upon the Seller's period of ownership of the property. If any of the information becomes
167 inaccurate after it is delivered to the Buyer and before closing, the Seller shall notify the Buyer and any real estate licensee
168 representing any party to the transaction in writing of such change.

170 **Seller acknowledges receipt of a copy of this document.**

172 Seller: _____ Date: _____ Seller: _____ Date: _____

174 At the time of acceptance of Purchase Agreement:

175 ☐ No change in property condition. Date: _____ Seller: _____

176 ☐ Changes are noted and initialed. Date: _____ Seller: _____

178 The Buyer/Prospective Buyer acknowledges receipt of this Property Condition Statement. Listing Broker and Agents make
179 no representations and are not responsible for any conditions existing in the property. The Buyer acknowledges that Buyer
180 has been advised to verify the information listed in this statement independently. **THE BUYER ACKNOWLEDGES AND**
181 **UNDERSTANDS THAT THIS DOCUMENT IS NOT INTENDED TO BE A WARRANTY OF ANY KIND OR A**
182 **SUBSTITUTE FOR ANY INSPECTION OF THE PROPERTY THE BUYER MAY WISH TO OBTAIN.**

Buyer	Date	Buyer	Date

HB 1251 3/5/19 Att #2

Seller's 2011 Flood Disclosure Statement

To be completed if "Yes" is answered on the Seller's Property Condition Statement Question,
"Seller's 2011 Flood Disclosure Statement attached?"



This form is approved by the Bismarck Mandan Board of REALTORS® which disclaims any liability out of use or misuse of this form.

Address: _____ "the Property"

In 2011 the Bismarck-Mandan area experienced a historically high water elevation flood event ("the flood"). This Flood Disclosure Statement is intended to provide information to prospective buyers concerning the effects of the Flood on the Property.

BUYER: Thoroughly inspect the property personally or have it inspected by a third party and inquire about any specific areas of concern. Buyer acknowledges and understands that this document is a disclosure only and is not intended to be a warranty of any kind or substitute for any inspection of the property the Buyer may wish to obtain.

SELLER: Personally complete this form. Describe conditions affecting the Property to the best of your knowledge. Check the appropriate answers and provide additional information where indicated. Apply answers to the land and/or all structures, including garage and out buildings ("the Property"). Attach additional sheets if necessary.

Did you own or live at the Property during the Flood? (check one) ☐ Yes ☐ No

Was the Property touched by water caused by the Flood? (check one) ☐ Yes ☐ No ☐ Unknown

If no, Explain _____

What was the source of the water? (check all that apply)

☐ Flood water ☐ Sump failure/Overflow ☐ Seepage (through walls, floor, window wells) ☐ Sewer Backup

Which areas of the Property were touched by the water? (check all that apply)

☐ Basement ☐ First Floor ☐ Garage ☐ Outbuildings ☐ Crawlspace ☐ Yard

What was the approximate depth of the water in the above areas? _____

Were sandbags or other devices put into place to protect the above areas? (check one) ☐ Yes ☐ No ☐ Unknown

Explain: _____

Did water touch those sandbags? (check one) ☐ Yes ☐ No ☐ Unknown

Explain: _____

Was the Property protected by city/community dikes specifically erected for this Flood? (check one) ☐ Yes ☐ No ☐ Unknown

If Yes, state the location of the dike: _____

Have there been any permanent dikes installed to protect the Property since the Flood? (check one) ☐ Yes ☐ No ☐ Unknown

If Yes, state the location of the dike: _____

Have you made changes to the Property to provide additional flood protection since the Flood? (check one) ☐ Yes ☐ No

If Yes, describe those changes: _____

Was the Property subject to an evacuation order? (check one) ☐ Yes ☐ No ☐ Unknown

Did you move out? (check one) ☐ Yes ☐ No ☐ N/A Explain: _____

Seller _____ Date _____

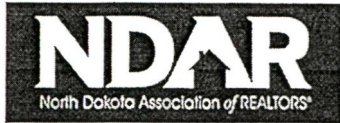
Buyer _____ Date _____

Seller _____ Date _____

Buyer _____ Date _____

The seller authorizes the Brokers or Salespersons to provide the following information to prospective Buyers. **THIS IS NOT A WARRANTY OR GUARANTEE OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PARTY(S) AND IS NOT A SUBSTITUTE FOR INSPECTIONS OR WARRANTIES THE PARTY(S) MAY WISH TO OBTAIN.** Information presented in this form is not intended to be part of any contract between Buyer(s) & Seller(s). BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE &/OR INSPECTIONS OF THE PROPERTY.

BISMARCK-MANDAN BOARD OF REALTORS® (REV. 02/12)



Chairman Klein and Members of the Industry, Business and Labor Committee, for the record, my name is Tricia Schlosser and I am the past chair of the Government Affairs Committee for the North Dakota Association of Realtors. I am also a broker of Century 21 Morrison Realty here in Bismarck-Mandan. I am here on behalf of the North Dakota Association of Realtors to testify in favor of House Bill 1251 with an amendment that written disclosure be required for ALL residential properties.

Prior to listing points in favor of this bill with an amendment, it is important to clarify a couple concepts of disclosure. First, latent defects are those defects in which the seller has actual knowledge, but a buyer would not necessarily know with reasonable investigation. An example would be repeated water in the basement that has been mitigated. Second, residential property is defined as 1-4 units of real property designed to be occupied as single or multi-family residences. Residential property may consist of a primary home, a vacation or second home, or an investment property.

The North Dakota Association of Realtors is in support of seller disclosure of latent defects in residential real property. We take the broader perspective that HB 1251 is a consumer protection bill. Disclosure of a property's condition is a protection for both a buyer and a seller and we want all consumers to enjoy the benefits of disclosure. The buyer is protected by being educated about

the property they are considering for purchase and the seller is protected from possible litigation if defects are discovered after the sale has closed.

Currently, as a "non-disclosure state," North Dakota statute does not require written disclosure by a seller. However, the North Dakota Supreme Court has ruled that "in cases of passive concealment by the seller of defective real property, there is an exception to the rule of *caveat emptor* [buyer beware] ...which imposes a duty on the seller to disclose material facts which are known or should be known to the seller and which would not be discoverable by the buyer's exercise of ordinary care and diligence. (Holcomb v. Zinke, 365 N.W.2d 507, 511-512, (N.D. 1985)) This means that even though North Dakota statute does not mandate disclosure, the courts still recognize that a seller should disclose defects that may affect the buyer's intended use and enjoyment of a property. HB 1251, with the recommended amendment to include all residential properties, would put into law what is already being enforced in the courts.

If this bill passes with the recommended amendment, it would have little impact on licensees and/or REALTORS®. Written disclosure is a part of almost every residential transaction conducted by a licensee. That written disclosure would now just need to be retained in our records, and in many cases it already is, as proof of compliance for the North Dakota Real Estate Commission. The filing of extra paperwork is a minimal requirement if it is required in the name of consumer protection. Why would the state mandate what we are already practicing and not require it for all consumers? Are consumers who works with a licensee worth protecting more than those who choose to buy and sell on their own? Again, this is a consumer protection issue and it should include all consumers.

Minnesota and South Dakota are both mandatory disclosure states along with most other states in the union. North Dakota is moving towards full disclosure with HB 1251 – but we believe it is important to go all in in order to protect residential consumers. As it is currently written, sellers choosing to sell on their own may have the false impression that they can cover up or not disclose defects because they are not working with a licensee. These sellers are opening themselves up to litigation, and with adequate proof provided by a buyer, having to pay damages. Without this amendment, we fear consumer confusion in both buyers and sellers. It is better to be clear and consistent and require written disclosure in all residential sales.

We want to address the concerns regarding the amendment to HB 1251. First, there is the concern about enforcement – who will enforce the law of mandatory disclosure for sellers of all residential property and how will it be done. The answer is simple. The enforcement mechanism would be the same as it is now. It is only when the buyer is harmed and seeks recourse through litigation does enforcement occur. The law can hold licensees to a higher standard and require signed disclosure forms in our records, but the law cannot force sellers to be honest in such disclosures. None of us can. That is why the courts are the ultimate enforcement – whether a seller works with a licensee or not, they are expected to disclose. If they do not and it is proven in court, they face consequences.

Another concern is how a consumer will have access to a property disclosure form. HB 1251 does not require a particular form be used by consumers; it simply requires disclosure to be in writing. Written disclosure can be a statement on a piece of paper describing material defects of the property or a fully executed form provided by a licensee. One can find sample disclosure forms on the internet that any seller can download. There is no one form that all sellers of residential

properties need to fill out and sign – the actual form is not important; the written disclosure is important.

A third concern is that if HB 1251 includes all residential properties, including investment properties or second homes, then a seller is not able to disclose defects because they do not live there full-time. I currently own three rental properties and I know when I have changed a hot water heater, when I have had a claim on a roof, when I have had water in the basement and what I have done to mitigate those issues. I do not know everything about those properties, but I do know some material facts that would interest a potential buyer. What I do not know, I cannot disclose. It is not unusual that sellers discover defects in their primary home they were unaware of when the buyer conducts a home inspection. Even though the seller lives in the property full time, the seller does not necessarily know everything about their home. Sellers should disclose what they know, no matter the type of residential property. Again, it protects both the seller and the buyer.

The North Dakota Association of Realtor's vision statement is to be "the trusted voice of real estate and the advocate for a better real estate future." In our attempt to carry out our vision statement, we are obligated to be the voice for the advancement of guidelines and best practices for all consumers, not just a select group. Therefore, we are supporting this bill with the inclusive amendment that protects all buyers and sellers. Please support a DO PASS ON HB 1251 with the recommended AMENDMENT. Thank you for your consideration. I am happy to answer any questions.

Senate Testimony – HB 1251 Disclosures

Chairman Klein and Members of the Industry, Business and Labor Committee, for the record, my name is Gloria Palm Connor. I am currently a member of the North Dakota Association of REALTORS® serving on the Government Affairs and Professional Development committees for NDAR. I also serve on the Fargo-Moorhead Area Association of REALTORS® as the Director in charge of the Government Affairs Committee. I am the Broker and co-owner of Beyond Realty in Fargo.

I am testifying in support of the ND House Bill 1251 Property Disclosure requirements. Having said that, I would ask this committee to consider amending the bill as written to expand the requirement to include all consumers, and not limit the requirements to transactions that include a real estate broker, assistant broker or real estate sales person.

The days when a seller could say, "Here's the house, hope you like it," and the term "Buyer Beware" are pretty much over and should be. In most states written disclosure statements are required making it illegal to conceal physical defects of a property. Almost every U.S. state has passed laws mandating that sellers give buyers specific information about what structural and other features the house contains, and their condition. North Dakota is one of a very few states that currently does not require a property owner to complete a Seller's Property Disclosure prior to transferring the property.

I, along with the North Dakota Association of REALTORS® Government Affairs Committee and Board of Directors, believe this is a consumer protection bill that is much overdue; that it will protect both buyers and sellers in a real estate transaction; and believe it should be considered for ALL sales of residence located in the state being sold or exchanged

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AH#4

by the owner without limiting the law to those that utilize the services of a real estate licensee.

During our Government Affairs Committee meetings regarding HB 1251 much of the discussion has been who would be responsible for enforcement should the bill become law. I believe enforcement of any law is the responsibility of the court system within the state. In Minnesota the liability for non-disclosure provides that in the event of non-disclosure the sale is not invalidated, but that the buyer may seek damages and other equitable relief through the legal system.

I support House Bill 1251 with an amendment to include all transactions for owner-occupied residence.

GLORIA PALM CONNOR | PRESIDENT | Broker

Beyond Realty, Inc.

4725 Amber Valley Pkwy. STE A

Fargo, ND 58104

OFFICE: 701.540.5161 | CELL: 701.261.5972

Home address: 733 Ryan Road, Mapleton, ND 58059



North Dakota Real Estate Commission
1110 College Dr Ste 207
Bismarck ND 58501-1207
ndrec@nd.gov

701.328.9749
www.realestatend.org

HB 1251 3/5/19 Att #5

Engrossed House Bill 1251 – seller must complete property disclosure if selling owner-occupied primary residence & any party uses licensed real estate agent

Neutral testimony

Senate Industry, Business and Labor Committee
Senator Jerry Klein, Chair
9:15 a.m., March 5, 2019

Good morning, Chairman Klein and members of the Senate Industry, Business and Labor Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission.

The N.D. Real Estate Commission provides this neutral testimony on Engrossed House Bill 1251.

In discussing the merits of Engrossed House Bill 1251, please consider the following points:

- The N.D. Real Estate Commission licenses and disciplines real estate practitioners ("licensees").
- The Commission can enforce only what is included in NDCC §43-23.

If this Committee issues a "Do Pass" recommendation on Engrossed House Bill 1251, and the legislature wants the Commission to have the jurisdiction to discipline licensees based on failure by licensees to act as required on page 2, lines 1 through 7, the bill will have to be amended to give the Commission authority to discipline licensees based on these additional requirements.

For example, the bill could be amended so page 2, lines 1 through 7, would be added as a new section to chapter 43-23.

- The Commission cannot recover monetary damages for any party.
- The Commission's jurisdiction is over transactions involving licensed real estate agents only, and not over all sales.

Thank you for your thoughtful consideration of this neutral testimony on Engrossed House Bill 1251. I am available for your questions and comments.

Members of the North Dakota Real Estate Commission are: Roger Cymbaluk, Chair; Scott Breidenbach, Vice Chair; members: Sandra Meyer, Steven Bitz, Diane Louser. Staff: Jeanne Prom, executive director.

1251 provides additional transparency and disclosure in a real estate transaction where a licensee is involved in the sale (representing the seller in a listing agreement or the buyer in an offer to purchase / buyer agency agreement).

Example of what the disclosure looks like in Bismarck (other markets have similar, but different)

This document is currently optional and used in many transactions (almost all)

The requirement would be for all sales primary residents and owner occupied / continued optional for second homes, investment properties, etc.

Can be tailored to the local market

Williston ground contamination isn't similar to Minot / Bismarck 2011 flood

Fargo may have issues required in Minnesota that Dickinson may not need or use

Grand Forks radon

Latent defects definition

General condition

Environmental

Structural

Mechanical

Would all but eliminate the session after session after session (including this one) where there are additional requirements placed on sales (RADON).

Example in the House

Lead Base Paint example

Carbon Monoxide example last session (Governor vetoed)

Negotiated as part of an offer to purchase
What the seller may say
What the buyer may say

Audit rules with NDREC - every two years / Agency Disclosure
and other required documents

Why NOT to include private sales

Our association is not in the business of providing services and
direction to those that choose not to use our professional services
(MLS / forms / websites, etc)

Private sales are NOT regulated / monitored / audited by an entity
like the NDREC

How would sellers in ND, now or years into the future, know?

How would buyers in ND, now or years into the future, know?

This bill concept was presented to NDAR two years ago, and they
voted to support this concept in March and re-affirmed their vote
in June. They testified in favor, but wanted some changes which I
oppose. We had a conference call last Friday afternoon for
approximately 45 minutes and I reiterated my opposition to
amending this bill. I'm still not totally clear if the association
supports or opposes, but I of the 25 or so members of the nearly
2000 in the association that were on the call, their opinions were
split and some changed their mind last week.

I worked with the co sponsors and many others in the real estate
industry for two years.

Appraisers, lenders, inspectors, insurance agents, other brokers,
NAR, agents in other states, consumers, title companies. This is
not an industry generated bill, it's a legislator generated bill with
industry support. You'll see an example of an industry generated
bill coming up next with legislator support.

HB 1251 3/6/19 AH#1

19.0067.02001
Title.

Prepared by the Legislative Council staff for
Representative Louser
March 5, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1251

Page 2, after line 7, insert:

"5. If a real estate broker, real estate assistant broker, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1."

Renumber accordingly

19.0067.02002
Title.

Prepared by the Legislative Council staff for
Representative Louser
March 6, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1251

Page 1, line 9, remove "assistant"

Page 1, line 9, after the second "broker" insert "associate"

Page 2, after line 7, insert:

"5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1."

Renumber accordingly