

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1132

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1132

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1132

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-12-01

Tape Number	Side A	Side B	Meter #
1	xx		140-3425
1		xx	255-2099
Committee Clerk Signature <i>Sam Decker</i>			

Minutes: Committee was called to order with these present: Chairman Froseth, Vice-Chair Severson, Reps. Delmore, Disrud, Eckre, Ekstrom, Fairfield, Grosz, Gunter, Herbel, N. Johnson, Kretschmar, Maragos, Tieman, and Niemeier.

Chairman Froseth : (140) The hearing of HB1132 is open.

Rep. Klemin : Testified in support of this bill. (See Attached Testimony)

Rep. Ekstrom : (421) Will this change make it any more difficult for a lender to trace ownership, title, responsibility or anything else about a mortgage loan?

Rep. Klemin : (446) We would still have the mortgage recorded, so that would contain the information. All the same things would be on the mortgage.

Rep. Ekstrom : (473) How about the setting of comparable value? I understand your worry about curious persons, but there are many occasions when the you want to look at like properties to compare value in a certain area. Do you see any restrictions for people trying to get this information?

Rep. Klemin : Actually, mortgage has nothing to do with value of property. You are better off going to the county treasurer's office and see what the property is assessed at. This is fair market value and is open to the public.

Rep. Eckre : (552) Why was this put in before? Do you know the history?

Rep. Klemin : I really don't know.

Rep. Kretschmar : (587) What will the mortgage say to identify the obligation?

Rep. Klemin : We do have another section of the law that deals with what mortgages are. These things address who the borrow and lender are , etc., and any other provisions that the lender wants in--duties and obligations. What we are dealing with in this section is what are the prerequisites for recordation in the Register of Deeds Office. Looking at the note date could include the amount of the principle. The note should identify the information for you in most cases, I feel.

Mahlcom Brown, State Bar Assoc. : (833) Gave testimony in support of HB1132. The purpose of a mortgage in ND is to give notice to the public that somebody claims a security interest in this particular real property. The whole purpose of the mortgage is to give notice to the public. On behalf of the State Bar and me, as a lawyer, having the interest rate in that mortgage serves no purpose. Many times it is tied to the Wall Street rate, or is a flexible rate (ARM), or is tied to a separate document. This makes it difficult to record and give an accurate statement.

Rep. Delmore : (930) Where would I go to find out information if this bill passes?

Mahlcom : You could get it from the borrower or bank if you get consent. You would still have the lack of information even if this passes. Nothing will really change as far as where you have to get the information. It's a problem today because of the variable interest rates or interest rates tied to documents.

Rep. Kretschmar : What would you state in the mortgage to identify that the obligation was secured?

Mahecolm : Take your standard house loan. Find the promissory note dated 1-11-01 and I think that would identify the obligation as being secured.

Rep. Eckre : Do you know why this information was initially put in? Do you know the history?

Mahecolm : I suspect it has been in for awhile and it might be hard to trace.

Jim Schlosser, ND Bankers Assoc. : (1200) The ND Bar asked for our input on this bill. We had some minor changes in the language. This bill would not make any changes as far as lenders in the state. We would include this amount of the mortgage like we do now. If there is no amount of indebtedness the register of deeds will not record it. As far as the terms of interest, I believe in most cases the lender will include the amount of interest. The bill eliminates the need for the register of deeds to make legal decisions on content dealing with indebtedness and terms of interest.

Chairman Froseth : (1666) Is the information that is at register of deeds used by political subdivisions for valuation purposes?

Jim : I don't think a mortgage would. I think the deed or some evidence of the sales price.

Rep. Delmore : (1726) Has there been problems with filing with the register of deeds?

Jim : Yes, on behalf of individuals, but not problems with lenders we represent.

Jim Horner, ND Land Title lobbyist : (1792) We are here in support of this bill to make it easier to get mortgages recorded to establish a lien. Normally a home loan does not cause any problems. Most problems arise when there are variable rates or rates tied to something else. Also, some states have different requirements. This bill will clarify things and make it easier for the register of deeds.

Rep. Fairfield : (1988) It seems like most of the problems come about because of fluctuating interest rates.

Jim Horner : Yes, and also different interpretations by register of deeds.

Sheila Dalen, Ward Co. Register of Deeds; Legislative Chair ND Assoc. Of Register of Deeds;

I am here to offer an amendment to HB1132. We would like the language, identification of the obligation being secured, to be taken out. (See Attached Testimony)

Vice-Chair Severson : (2487) Can you give me an example of why its a problem to have these words in?

Sheila : If you leave the sentence in you should describe what it means, so that we don't have to decide.

Vice-Chair Severson : (2578) When I read this, I don't see that the register of deeds has to make the decision is it is appropriate or inappropriate. It just says there has to be an obligation of it being secured. It could be the amount, or it could be the interest. You don't have to identify what that is anymore. Are you reading more into it than is necessary?

Sheila : Maybe it's because of the way it was worded before. We want to lessen what we are suppose to do. It does tell us we are looking for something on that mortgage. We have to know what we are looking for to be able to record it. It's not our job to identify.

Rep. Delmore : (2737) You want something concrete to look for that is consistent in each of the documents that is placed with you.

Sheila : There are 53 register of deeds and 53 different interpretations and how many lenders may interpret, too.

Chair Froseth : If we eliminated the proposed new legislation, and use your amendment, then the only thing that would be required is the amount of indebtedness.

Sheila : Right. The law requires that. The old wording remains, just drop the interest rate words.

Mary Splichal, ND Assoc. Of Realtors : I am here in support of this bill, but we would like the language of indebtedness left in. We have no problem with leaving the interest rate out. I do not look at to the mortgage to find value of property as a Realtor.

Vice-Chair Severson : (3020) The only reason you, as a Realtor, want the indebtedness in there is too see if it is greater than a possible sale price?

Mary : As a real-estate agent a buyer, I may be curious as to the mortgage amount to advise the buyer as to fair price, especially if it was just purchased six months ago. I have other avenues to find that out; however, then from the mortgage. You may need that information for home equity loans or other loans against the equity. Basically, we are supporting the bill.

Chair Froseth : You don't know the current balance of the mortgage by checking at the register of deeds.

Mary : That is correct.

Chair Froseth : Do we have more testimony for or against?

Rep. Kretschmar : (3290) I have a question for Rep. Klemin. Would you have any objection to putting a period after mortgagee and deleting the rest of that line and also line 10.

Rep. Klemin : That would also take care of the problem. To have the interest rate language left in will not take care of the problem for the register of deeds. I need to make that clear again.

Chair Froseth : Hearing no more for or against this bill, hearing on HB1132 is closed.

Side B, 756

Chair Froseth : Called the meeting back to order to take up HB1132.

Rep. Kretschmar : (782) I propose an amendment for HB1132. I move to place a period after mortgagee, on line 9, and delete the rest of line 10 and delete the word *secured* on line 11. The rest of line 11 and 12 are O.K.

Vice-Chair Severson : (835) I second that.

Rep. N. Johnson : In order for that to pass, the word *indebtedness* would also have to be removed in line 7 in the title.

Rep. Kretschmar : Yes.

Rep. Ekstrom : (1100) I feel we will loose historic history is we take the indebtedness out.

Chair Froseth : I don't know what benefit that has on an old mortgage because it is not true to today's value. No legal value.

Rep. Niemeier : (1327) I feel the same way about the including the amount of indebtedness. I think it helps the register of deeds.

Chair Froseth : (1385) I amendment would not preclude the amount of indebtedness. It could be included in the mortgage.

Rep. Delmore : (1440) My problem with it is it is a public access thing. We think we have privacy right, but anyone who has been on a computer knows better. I don't know why this bill is necessary.

Rep. Fairfield : (1485) I have never heard any reason why putting the amount of indebtedness is a problem. Can we leave that part in.

Rep. Herbel : (1519) My concern is what is that telling us, really. How do you how much the obligation is? Historic purpose for what?

Rep. Ekstrom : It will give you an approximate value for historic purpose. It gives me an ability to say that at the time this property was worth approximately this.

Chair Froseth (1633) A better source to find value is real-estate records.

Vice-Chair Severson : (1644) In 1979 I built a new store. Curious eyes went to the register of deeds and said there was no way I could buy that. I should be broke. What purpose was it in them knowing this information then to be nose. They could have asked me instead of me hearing this in the coffee shop.

Rep. Fairfield (1559) I still have not heard where it has caused any big problems. Why eliminate.

Vice-Chair Severson : In the same light, I have found no major reason to leave it in.

Rep. Maragos : (1890) I am going to support the amendment because it will help the register of deeds. We heard from them that this is the most important part of this legislation. It is a simple and consistent way to determine recordation.

Chair Froseth (2040) We have a motion and a second on the floor. **A VOICE VOTE ON AMENDMENT: YES CARRIED. AMENDMENT PASSED.**

Vice-Chair Severson moved a **DO PASS AS AMENDED**, and Rep. Herbel seconded.

ACTION ON BILL: 12 YES and 3 NO. Bill passed. Rep. Kretschmar will carry.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1132

Page 1, line 9, remove "an"

Page 1, line 10, remove "identification of the obligation being"

Page 1, line 11, replace "secured" with "the amount of indebtedness."

10293.0101
Title.0200

Adopted by the Political Subdivisions
Committee

January 12, 2001

VR
1/12/01

HOUSE AMENDMENTS TO HOUSE BILL NO. 1132 HOUSE POL. SUBS 1-12-01

Page 1, line 7, overstrike "- Description of indebtedness"

Page 1, line 9, overstrike "and an"

Page 1, line 10, remove "identification of the obligation being"

Page 1, line 11, remove "secured"

Renumber accordingly

Date: 1-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1132

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 10293,0101 ^{title} .0200

Action Taken Do Pass As Amended

Motion Made By Vice Ch. Severson Seconded By Rep. Herbel

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom		✓			
Rep. April Fairfield		✓			
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier		✓			
Rep. Andrew G. Maragos	✓				

Total (Yes) 12 No 3

Absent 0

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE (410)
January 15, 2001 9:02 a.m.

Module No: HR-05-0962
Carrier: Kretschmar
Insert LC: 10293.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1132, as amended, Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 03 NAYS, 0 ABSENT AND NOT VOTING). placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "- Description of indebtedness"

Page 1, line 9, overstrike "and an"

Page 1, line 10, remove "identification of the obligation being"

Page 1, line 11, remove "secured"

Renumber accordingly

2001 SENATE POLITICAL SUBDIVISIONS

HB 1132

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1132

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 15, 2001

Tape Number	Side A	Side B	Meter #
Hearing not Recorded			
Committee Clerk Signature <i>Mary Jo Wocke</i>			

Minutes:

The hearing was opened on HB1132; relating to the recordation of a mortgage.

REPRESENTATIVE KLEMIN: Sponsor of the bill also spoke in favor of the bill. See written testimony. Variable rates on documents by reference that affects the multiple of states, terms of interest taken out. SENATOR LYSON: In situations where a sheriff gets papers on somebody, who is the first lien holder? REPRESENTATIVE KLEMIN: There is a levy against property. They know who is the 1st lien holder as its on the title of the property. JIM HORNIER: Spoke in favor of HB1132. See written testimony. This bill does not affect the recording of deeds. It will not eliminate the mortgage amount and the cost. Does not make that a requirement. CLAUS LEMBKE: North Dakota Association of Realtors. They looked at the bill and had some concerns with the notification of the lender and the disclosure note and interest rate. After working this out they are in support of this bill. JIM SCHLOSSER: North Dakota Bankers Association. Spoke in strong support of HB1132. A person's indebtedness is on the amount of the mortgage listed and

Page 2
Senate Political Subdivisions Committee
Bill/Resolution Number HB1132
Hearing Date February 15, 2001

terms of the percent adjustable rate and variable interest rates. Bill would eliminate the Register of Deeds to determine the legalities. SENATOR COOK: I have some increased correspondence on this bill, why is it so important to everyone? JIM SCHLOSSER: The lender without the consent of the borrower. When the lien is present, the transaction is addressed. Does not determine what the balance is due. MALCOLM BROWN: Real property section. He supports the bill and the amendment. You must consider the whole purpose and recording document in the courthouse. SHEILA DAHLIN: Register of Deeds spoke in support of the bill. SENATOR WATNE: Is this fitting everything into one system through information obtained in the Internet. With your system is there much access to this? SHEILA DAHLIN: North Dakota Information Network. I am not thinking so. I do not anticipate amount of mortgage will be there. Very technical way. SENATOR WATNE: In refinancing, is the new deed recorded? SHEILA DAHLIN: Just the mortgage is recorded.

Hearing Closed on HB1132.

Discussion was held on HB1132.

Senator Mathern moved for a Do Pass

Senator Lee- 2nd

Roll call vote 8 Yeas, 0 No, 0 Absent

Carrier: Senator Mathern

REPORT OF STANDING COMMITTEE (410)
February 15, 2001 1:42 p.m.

Module No: SR-28-3533
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1132, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **DO PASS** (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1132 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1132

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1132
JANUARY 12, 2001**

Mr. Chairman and Members of House Political Subdivisions Committee:

I am Lawrence R. Klemm, Representative from District 47 in Bismarck. I am here to testify in support of House Bill No. 1132. HB 1132 amends Section 35-03-04 of the North Dakota Century Code, which sets out the requirements that must appear in a mortgage in order for it to be recorded in the Office of the Register of Deeds.

The amendments to this section on lines 7 and 8 of the bill and on the beginning of line 9 are "form and style" changes made by the Legislative Council. They do not affect the merits of this bill.

The purpose of the bill is to delete the overly restrictive language currently in the law that requires a mortgage to contain an "adequate statement as the amount of the indebtedness and the terms of interest" and to replace that language with an "identification of the obligation being secured."

Modern mortgage financing is used for more than just direct monetary obligations. There are situations where mortgages are used to secure other obligations, such as a personal guaranty of the debt of someone else. Mortgages are also used where a loan is advanced to one person, and the amount of the land owned by that person is not sufficient to secure the debt. A mortgage is then given by another person as additional security for the loan to the first person, without using a personal guaranty. In either case, it should not be necessary to recite the amount of the underlying debt from a borrower on a mortgage given by a third person. In addition, the amount of the principal of a loan usually declines as payments are made, so reciting the amount of the debt is only accurate before any payments are made. As time goes by and the debt is amortized, the amount of the remaining principal balance is considerably lower, so reciting the amount of the debt in the mortgage becomes meaningless.

With regard to the terms of interest, it is not always possible to state the rate precisely. There are many cases, particularly in commercial loans, where the interest rate is a complex variable rate or is dependent on market or economic conditions over time. In those cases, the "terms of interest" can be very complicated and may be set out over several pages in a document. I have even

heard of a case where the "terms of interest" were contained in a separate interest rate document that was several hundred pages long.

Why are these things something that the public needs to know about in private financial transactions? Requiring these things to be recorded as a part of a mortgage serves no compelling state need. Anyone with a legitimate interest in knowing the actual amount of the principal of an loan and the interest rate can find out from either the borrower or the lender (with the consent of the borrower).

The purpose of recording a mortgage under North Dakota law is to give notice to the public that a mortgage lien exists and is claimed by a lender. A person with an interest will then be notified of the existence of the mortgage lien when buying property or making other loans. Beyond that there is no reason for including the information other than to satisfy the desires of curious persons.

I urge you to approve passage of this bill. Thank you very much.

1-12-07

TO: Chairman Froseth and Members - Political Subdivisions

FR: Sheila Dalen - Legislative Chairperson, Register of Deeds Association

RE: HB 1132 MORTGAGE RECORDING MUST IDENTIFY OBLIGATION

Good morning Mr. Chairman, and members of the committee. I am Sheila Dalen, chairperson of the Register of Deeds Association Legislative Committee. I am here to offer an amendment to HB1132.

The way HB1132 is drafted in its present form leaves 53 Register of Deeds to interpret what the wording says.

In speaking with members of the ND Abstractors they had intended for this bill to drop the language referring to having the terms of interest requirement on a mortgage prior to recording. The bill is doing that but is also changing the other language to add that a mortgage must show an identification of the obligation being secured.

This language is unclear and could cause confusion in trying to record mortgages from one county to the next.

This will cause problems both for the Register of Deeds and also Abstractors trying to get their documents recorded in a timely fashion.

HOUSE BILL 1132

Mr. Chairman and Members of the Political Subdivisions Committee:

My name is Jim Horner, and I am Lobbyist for the North Dakota Land Title Association, and Chairman of the Legislative Committee of said Association.

I am also a licensed abstractor, licensed title insurance agent, and our company, North Dakota Guaranty & Title Company works daily in real estate transactions.

The North Dakota Land Title Association is strongly in favor of the removal of the requirement to show the interest rate on the mortgage as a requirement for recording. In the modern era, there are hundreds of different ways for the lender to calculate the interest. Whether the interest rate, or the amount of the indebtedness, is shown on the mortgage should not be something the Register of Deeds has to determine. They in their duties are to record the mortgage to give notice to the public that there is a lien on that specific property. This does not mean that mortgages will not have amounts and interest rates shown on them. That will be between the borrower and the lender and other documents that they execute, such as the note, and interest rate agreements, etc.

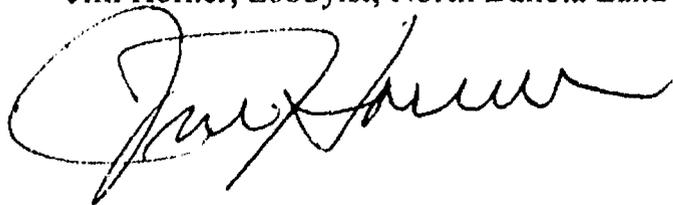
From my experience, most of the problem arises in commercial transactions. Just this week we had a mortgage to record for \$630,000,000. It covered many pieces of property in many states. It recited that the interest to be paid was contained in 2 notes executed in connection with the mortgage. Under the present law, it could not be recorded, and was not recorded. So now this is not a lien on the property at this time and anything could now be recorded and could be a prior lien in front of the \$630,000,000. mortgage.

Also, in residential properties we are seeing creative interest rates, and in some cases the Register of Deeds is not sure if what is shown is adequate for recording purposes. And this should not be their responsibility.

This bill would eliminate the requirement for any amount of indebtedness or interest rate to be shown for recording purposes ONLY. I do not think that there will be much of a change in the residential loans. I would think they would still show the amount of indebtedness, and possibly the interest rate also. That is between the borrower and the lender as to what information they want to be put of record. Not a duty of the Register of Deeds. Like I said before, I do not anticipate that there will be many changes, however, I would have been able to have the mortgage for \$630,000,000. recorded. And there have been numerous other mortgages of a similar nature, also in the past that could not be recorded, for the same reason.

Thank You for allowing me to testify before this committee, and I will be happy to answer any questions that you may have.

Jim Horner, Lobbyist, North Dakota Land Title Association



**TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1132
FEBRUARY 15, 2001**

Mr. Chairman and Members of Senate Political Subdivisions Committee:

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill No. 1132. HB 1132 amends Section 35-03-04 of the North Dakota Century Code, which sets out the requirements that must appear in a mortgage in order for it to be recorded in the Office of the Register of Deeds.

The purpose of the bill is to delete the language currently in the law that requires a mortgage to contain an "adequate statement as the amount of the indebtedness and the terms of interest" and to simply require that the mortgage or an assignment of mortgage contain the post office address of the lender or its assignee in order to be recorded by the Register of Deeds.

Modern mortgage financing is used for more than just direct monetary obligations. There are situations where mortgages are used to secure other obligations, such as a personal guaranty of the debt of someone else. Mortgages are also used where a loan is advanced to one person, and the amount of the land owned by that person is not sufficient to secure the debt. A mortgage is then given by another person as additional security for the loan to the first person, without using a personal guaranty. In either case, it should not be necessary to recite the amount of the underlying debt from a borrower on a mortgage given by a third person. In addition, the amount of the principal of a loan usually declines as payments are made, so reciting the amount of the debt is only accurate before any payments are made. As time goes by and the debt is amortized, the amount of the remaining principal balance is considerably lower, so reciting the amount of the debt in the mortgage becomes meaningless.

With regard to the terms of interest, it is not always possible to state the rate precisely. There are many cases, particularly in commercial loans, where the interest rate is a complex variable rate or is dependent upon market or economic conditions over time. In those cases, the "terms of interest" can be very complicated and may be set out over several pages in a document. I have even heard of a case where the "terms of interest" were contained in a separate interest rate document that was several hundred pages long.

The purpose of recording a mortgage under North Dakota law is to give notice to the public that a mortgage lien exists and is claimed by a lender. A person with an interest will then be notified of the existence of the mortgage lien when buying property or making other loans. Beyond that there is no reason for including the information other than to satisfy the desires of curious persons. Anyone with a legitimate interest in knowing the actual amount of the principal of an loan and the interest rate can find out from either the borrower or the lender (with the consent of the borrower).

The amendment also makes it easier for the Register of Deeds, who will no longer need to closely examine the language in the mortgage to determine if it contains an "adequate" statement of the debt and interest.

I urge you to approve passage of this bill. Thank you very much.

Contact Lenders:

- 1.) County Needs to Know where Letters are to be sent.*
- 2.)*