

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1119

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1119

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1119

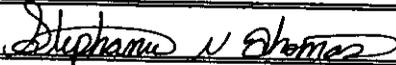
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2121

Committee Clerk Signature



Minutes:

Chairman George Keiser: Called the meeting to order on HB 1119.

All committee members were present.

Pat Jergenson, Secretary /Treasurer/ North Dakota Real Estate Commission: Appeared in support of HB 1119 and provided written testimony. (SEE ATTACHED TESTIMONY).

Claus Lemke: Appeared in support of HB 1119, and stated that our association of realtors has 8 local board of realtors, with a total of 1,500 realtors, that are members of our association, it is a trade association that you don't have to be long to that these realtors belong to there is about 2000 licensees', that are licensed by the real estate commission brokers salesperson, but 1,400 of those are members of our association, we have 2 people that have impact and knowledge about 2 sections of this bill and with your permission I would like to call on them and that is Scott Louser, and Brenda Martinson of Fargo, N.D.

Scott Louser, National Director, North Dakota Association of REALTORS: Appeared in support of HB 1119 and provided written testimony (SEE ATTACHED TESTIMONY).

Brenda Martinson, Broker Manager RE/MAX Realty 1, Fargo, N.D.: Appeared in support of HB 1119 and provided written testimony (SEE ATTACHED TESTIMONY).

Representative Thorpe: Can you explain what the main reason is, that brought up this change that you are asking for here?

Brenda Martinson: The old bill just allowed one individual, and this is expanding it to one or more people from the same firm to be able to form an organization.

Chairman Keiser: Where is the fiscal note on this bill?

Claus Lemke: It has no fiscal impact on the state, but would be to the agency that introduced this bill, it has a fiscal impact to the people that are incorporating, where a husband and wife would each have to have a corporation so there is a savings for the individuals
There was no opposition.

Hearing closed.

Representative Dietrich: I make a motion for a DO PASS.

Representative Zeiser: Second the motion

Motion Carried.

Representative Dietrich will carry the bill on the floor.

Date: 1-29-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1119

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Dietrich Seconded By Rep Zeiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch			Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Dietrich

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

REPORT OF STANDING COMMITTEE (410)
January 29, 2007 1:10 p.m.

Module No: HR-19-1437
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1119: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1119 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1119

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1119

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3938

Committee Clerk Signature



State Real Estate commission:

Pat Jergenson, Secretary Treasurer of the ND Real Estate Commission - In Favor

TESTIMONY # 1 *Read over testimony*

S Klein: In section four, for an example.

S Potter: When you have a secretary-treasurer in your organization, are you fulfilling all those functions?

Pat J: The commission has a Chairman and a Vice Chairman and 3 other commissioners and I'm hired staff, we never did have a Secretary-Treasurer except when we set up in 1957.

S Heitkamp: Is there enough separation between taking care of business, who's doing the check and balance?

Pat J: We have 2 staff people, we follow the auditing processes, as far as the money portion, I handle one portion of it, I do the deposits, she does all the reconciliation of the accounts.

S Heitkamp: You're the executive director, but does it take something in code to do that?

Pat J: I don't know why when it was established in code that it made that person hired basically run the commission and handle the commission. It's a housekeeping bill, it's something we've talked about before.

S Potter: Filling out of forms, the forms I fill out, they require me to designate as Secretary Treasurer, in our case it's someone on the board, not hired staff, but don't you have to have a secretary? Doesn't every organization have a secretary?

Pat J: Our attorney has reviewed, not aware of that.

S Klein: Among the executive committee, VP, President, do you have that sort of tier?

Pat J: The commission has 5 people appointed by the governor and they have a Chairman and a vice chairman and they elect those positions every year.

S Klein: So no one amongst that 5 have been designated as a secretary or a treasurer.

Pat J: No

Scott Lowser – President of Association of State Realtors - In Favor

National Director of the Association of Realtors of ND.

Provided a history of how the agency works:

Prior to 1993, every licensee in ND was represented seller. Whether they were a direct agent or a sub agent, every agent, licensee, would represent a seller in a transaction. With the help of the legislature in 1993, that changed and now consumers can have a licensee represent them as a buyer agent similar to a seller's agent. We put a sign in the yard when we represent the seller, we don't represent the buyer with a sign around their neck. With that change, brokers, if under an agreement, those consumers are called "clients." The other party in the transaction would be the "customer." In this, brokers have the obligation to maintain records, privacy records for their clients, not their customers. Customers would be represented by another broker. In an event that a consumer would request information, a broker couldn't be expected to give information to a customer about their client or vice versa, they shouldn't be expected to have information about a customer to give their client.

When you talk about settlement statements, there's a lot of time settlement statements, the lender or title company would not provide information for the other party. The seller may not see what the buyer had on their settlement statements and vice versa. A broker couldn't provide that for someone they don't represent. Ask for favorable vote.

S Heitkamp: Scott, you did a good job explaining. Where would you find it? Is it "buyer beware?"

Scott L: It used to be "buyer beware," prior to 1993. If you are a seller, your mortgage payoff would be on a settlement payment and the potential buyer would be entitled to see that information what your mortgage payoff would be. \$10,000 or \$200,000.. Most lenders, some lenders will not have that disclosed. The settlement statement may be blank on that side. The broker may not have that information because they did not represent that party.

S Heitkamp: You're getting stuck in the middle. In all your years, have you seen somebody come back to you and say, "hey, this guy didn't clear this up, we got problems?"

Scott L: No I haven't. I hate to say it's a "housekeeping bill" because that's not necessarily the way....

S Heitkamp: Don't say that.

Scott L: I would say in this case they're being proactive, and this is something that was caught by our auditors.

S Heitkamp: So you not besieged with complaints about, "Joel closed on his house and there's still debt, and now I own it," that type of thing.

Scott L: I've not experienced it.

Brenda Martinson, Fargo Moorhead ND Association - In Favor

TESTIMONY # 2 *Read testimony*

S Klein: Seeing that the attorney missed it, are we going to have any other issues?

Brenda M: I believe that that should take care of all of the different entities in our organization that would want to be in that kind of a status.

S Klein: Did we find that those couples were out or we just let them slide along until we fix this?

Brenda M: They cannot, and so we are at that point right now where a husband and wife cannot form a corporation of any kind.

S Heitkamp: The organization that you so actively work in now, if you're going to sit down and have an executive director that runs everything and makes sure the day to day business gets done and is held accountable to the board, who's taking the minutes? Watching the books? How do you know this is getting done? Is the board going to name someone on that 5 member panel, Secretary treasurer?

Brenda M: I follow what you're saying, I know they will have to be registered with the state.

S Heitkamp: Someone at the meeting has to take minutes, right? Just the structure of it, You're taking away a secretary/treasurer, you're making her executive director, who's going to take the other roles?

Brenda M: I'm not exactly sure.

S Klein: What we're hearing is that Pat was the treasurer, took the minutes, brought the info to the commission meetings, she's going to get new business cards, do everything she did before except she has a new title.

Brenda M: Correct

S Hacker: I understand about the husband and wife, are their laws that you can't share commissions.

Brenda M: When you're an LLC, you receive all of the benefits. When e look at the bill, it will incorporate it.

S Hacker: If you want to go into a partnership with someone else, the single purpose of an LLC is to complete a transaction between, you have to be a real estate agent first off to be part of that LLC and if so, it has nothing to do with the transaction, but because I do it on the LLC, now I can dump those commissions into the LLC.

Brenda M: All the commissions have to be run through the brokerage, the agent or the LLC.

Claus Lembke, ND Association of Realtors, Executive Director - In Favor

There are two different entities. The Real Estate Commission is a state agency and does not have to have a secretary/treasurer. Mr. Poolman doesn't have a secretary/treasurer. A non-profit corporation, which my association is, have to have a secretary/treasurer, we don't elect a secretary/treasurer anymore because there are too many officers on the ladder too many years, so they made me the permanent secretary/treasurer. You're correct, that every corporation does, but the Real Estate commission is NOT a corporation, they are a state agency. There is no requirement to have a secretary/treasurer. There checks and balances are handled the way Pat Jorgenson explained it. The oversight lies in the commission, they are the ultimate power and responsibility. Procedures to incorporate. You don't incorporate to an LLC or LLP for a one transaction. What this is intended for is for the high-producers. The high producers see an advantage in there. They quite often hire an assistant sometimes licensed, sometimes unlicensed. Current law does not allow that sales person to pay another commission to another sales person, it simply doesn't. But by creating the LLC, they can do that, the current law allows only the BROKER to pay commission directly to those sales person so they can redistribute that however they wish within their LLC or LLP.

S Heitkamp: Why did they do it in the first place? Why did they name her that in the first place? You've been there forever.

Claus L: Don't follow the question.

S Heitkamp: She was named secretary/treasurer, which would lead me to believe someone is taking the minutes and watching the books, right?

Claus L: That position will continue to do that.

S Potter: Can you explain to me why agents are prevented from sharing the commissions?

Claus L: It's the principal of the business. The agency, the listing, buyer agency, all the contracts are in the name of the Broker, and then the Broker by an agreement with an independent contractor entitle them, empowers them to sign instruments on behalf of the broker, it's always the BROKER, the entire business is always the Broker. You might think you're working with the real estate worker as an independent contractor, but it's really the broker that they represent. That's the form the business has always been. I think when we created for those high producers, the ability to incorporate themselves, they are independent contractors, so they should be entitled to the same abilities as the broker has. A broker has the ability to incorporate. Scott wanted to incorporate his own salesman, independent contractors and he couldn't do that, so he got himself a brokers license and then he can do that. It seems antiquated that you have to do it that way. I don't think the sharing of the commission is so much an issue. If two or more people are starting a little corporation or in partnership to enable to manage their business. They can buy and sell in that corporation, before social security, workers ___ and all those things.

It doesn't protect them from illegal activity that they cannot do.

S? O? N?

CLOSE

Motion for a DO PASS by S Heitkamp

Second by S Wanzek

Roll Call for a DO PASS on HB 1119 – 7-0-0 Passed

Carrier: S Heitkamp

S Heitkamp: This whole hearing would have been quicker if Claus would have got up there quicker.

S Klein: Someone has to back clean up.

CLOSE

Date: 2-27-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1119

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken NO PASS

Motion Made By Heitkamp Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7 No 0

Absent 0

Floor Assignment Heitkamp

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

REPORT OF STANDING COMMITTEE

HB 1119: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1119 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1119

#1



North Dakota Real Estate Commission

200 E Main Ave., Suite 204 • PO Box 727 • Bismarck, ND 58502-0727
Phone 701-328-9749 • Fax 701-328-9750

*some testimony
& attachments
given to
Senate*

House Bill 1119

Testimony before the House Industry, Business and Labor Committee
January 29, 2007

Members

Chair
Jerry Schlosser
Bismarck

Vice Chair
Diane R. Louser
Minot

Roger M. Cymbaluk
Williston

Kris Sheridan
Fargo

Jerome C. Youngberg
Grand Forks

Patricia M. Jergenson
Secretary Treasurer

By: Pat Jergenson, Secretary Treasurer
North Dakota Real Estate Commission

Mr. Chairman and members of the House Industry, Business and Labor
Committee;

My name is Pat Jergenson and I am the Secretary Treasurer for the North Dakota
Real Estate Commission.

House Bill 1119 is a housekeeping bill dealing with 4 items. The first is a change
in my title from Secretary Treasurer to Executive Director. The Commission
feels that the title of Executive Director better reflects the responsibilities of this
position. Section 1, pages 1 and 2 establishes the framework for the office of the
real estate commission and its secretary treasurer. The only change to this section
is to the title of executive director. Section 3 on page 3 refers to non resident
brokers and again the only change is to the title of the Secretary Treasurer to
Executive Director. Section 5 and 6 on page 4 also deal with the title change.

The second item is found in Section 5, line 7 which refers to a list of licensees that
the Commission is required to "mail" to any person in the state upon request and
to all licensed brokers. We recommend that the word mailed be changed to
provided because we now have the capability of providing this information
electronically.

The third item is in Section 2 and is an amendment to Section 43-23-05.1 on page 2 regarding the licensing of a salesperson organization. This section was passed into law in the last Legislative session to allow salespeople to form an organization (such as a corporation) and have their commissions paid to that organization so the licensee would be able to participate in the benefits and advantages that such an arrangement has to offer. Once in place we discovered that the law limited the ability to license an organization to one that was owned solely by one salesperson (as stated on page 2 line 9). Today's business plans include teams, spouses and broker associates which should not be excluded from being able to be licensed as an organization.

The last item is found in Section 4 and changes the requirements regarding documents brokers are required to keep in their files. Parties not represented by the licensee are not obligated to give them a copy of the closing statement due to privacy issues. The current law requires the broker to have closing statements that in reality they may not be able to obtain. Page 3 lines 22 through 29 amends Section 43-23-11.1 subsection 1, subdivision o to require brokers to keep in their files only the closing statements for the parties they represent in the transactions.

There are a couple of real estate professionals here to testify in more detail regarding the salesperson organization and the closing statement requirement.

We ask your favorable consideration of House Bill 1119.

Thank you.



North Dakota Association of REALTORS®

318 West Apollo Avenue – Bismarck, ND 58503-1412
 Phone: 701-355-1010 or 800-279-2361 – Fax: 701-258-7211
www.ndrealtors.com info@ndrealtors.com

#2

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Moni@ndrealtors.com

House Bill 1119

Testimony before the House Industry, Business and Labor Committee
January 29, 2007

By: Scott Louser
National Director
North Dakota Association of REALTORS®

Mr. Chairman and members of the House Industry, Business and Labor Committee;

My name is Scott Louser and I am a past State President and current National Director for the North Dakota Association of REALTORS®. I want to provide a very brief history of how changes in agency law since 1993 affect the request we present before you today. Prior to 1993, North Dakota law required that all real estate licensees represented sellers in real estate transactions. Under your direction, the current law now allows for buyers as well as sellers to have representation through a broker in a transaction. This enhancement has improved issues such as confidentiality, accounting and reasonable care due a buyer. As the current law is written, brokers may not have access to information if that principle was not a client of the broker in the transaction.

From a practical standpoint, consider each of your own properties as a seller. Under current law, a broker would be required to disclose and keep on file information from a buyer regarding the loan payoff on your personal home; information deemed confidential by most home owners. This proposal would eliminate the requirement for brokers to provide and maintain information to which they may not be entitled.

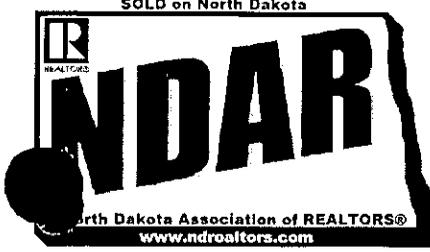
We ask for your favorable consideration of House Bill 1119.

Thank you



#3

SOLD on North Dakota



North Dakota Association of REALTORS®

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ADMINISTRATIVE ASSISTANT
Moni Krantz
Moni@ndrealtors.com

January 29, 2007

Testimony on HB 1119

To: House Industry Business and Labor Committee

From: Brenda Martinson, Broker Manager RE/MAX Realty 1, Fargo

Chairman Keiser and members of the House IBL Committee:

My name is Brenda Martinson. I am the Managing Broker at RE/MAX Realty 1 in Fargo and a member of the Fargo Moorhead Area Association of REALTORS® and the North Dakota Association of REALTORS®.

There are a number of REALTORS® in my company who, as independent contractors, will be affected by this legislative proposal since they work as a husband and wife team or as a team with two or more agents within our company.

I would like to address the proposed amendments in Section 2 on page 2 lines 5 through 25. It dates back to the last session when we requested changes in the statutes that govern how real estate agents can be paid their commission. House bill 1475 was passed and adopted in the 2005 session. It provided enabling legislation allowing salespersons to operate as a Limited Liability partnership (LLP), Limited Liability Corporation (LLC) or some other organization. After the passage of this legislation the Real Estate Commission's Attorney and our Association Attorney informed us that the new law is applicable only for a single person.

We found in a number of companies that had husband and wife teams who attempted to form a LLP, LLC or some other organization but they could not. That is why we are here to seek these additional changes. HB 1119 on page 2 lines 10, 11 and 12 proposes to enable an individual and that individual's spouse and other salesperson from the same firm to create a LLP, LLC or some other organization if they meet all the requirements detailed in Section 2 of this bill.

Mr. Chairman, we support this legislation and we ask you to give this bill a do pass. I will try to answer any questions that you or your committee may have.



A.
U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT
SETTLEMENT STATEMENT

B. TYPE OF LOAN:
 1. FHA 2. FmHA 3. CONV. UNINS. 4. VA 5. CONV. INS.
 6. FILE NUMBER: [REDACTED] 7. LOAN NUMBER: [REDACTED]
 8. MORTGAGE INS CASE NUMBER:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER:
 [REDACTED]
E. NAME AND ADDRESS OF SELLER:
 [REDACTED] and
 [REDACTED]
F. NAME AND ADDRESS OF LENDER:
 WELLS FARGO BANK, N.A.
 2517 E. 54th Street North
 Sioux Falls, SD 57104
1.0 3/98 (06-2710.PFD/06-2710/16)
H. SETTLEMENT AGENT: 45-0277381
 J.M. DEVINE & COMPANY, INC.
I. SETTLEMENT DATE:
 November 20, 2006
PLACE OF SETTLEMENT
 315 3rd Ave. SW
 Minot, ND 58701

J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:	
101. Contract Sales Price	107,000.00
102. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	1,041.03
104. PAY 2006 TAXES to WARD COUNTY TREASURER/MIZ	1,998.91
105.	
<i>Adjustments For Items Paid By Seller in advance</i>	
106. City/Town Taxes to	
107. County Taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. GROSS AMOUNT DUE FROM BORROWER	110,039.94
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201. Deposit or earnest money	500.00
202. Principal Amount of New Loan(s)	85,600.00
203. Existing loan(s) taken subject to	
204. CREDIT PAID BY LENDER	1,229.03
205.	
206.	
207.	
208.	
209.	
<i>Adjustments For Items Unpaid By Seller</i>	
210. City/Town Taxes to	
211. County Taxes 01/01/06 to 11/20/06	1,768.90
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. TOTAL PAID BY/FOR BORROWER	89,097.93
CASH AT SETTLEMENT FROM/TO BORROWER:	
301. Gross Amount Due From Borrower (Line 120)	110,039.94
302. Less Amount Paid By/For Borrower (Line 220)	(89,097.93)
303. CASH (X FROM) (TO) BORROWER	20,942.01

K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:	
401. Contract Sales Price	107,000.00
402. Personal Property	
403.	
404.	
405.	
<i>Adjustments For Items Paid By Seller in advance</i>	
406. City/Town Taxes to	
407. County Taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. GROSS AMOUNT DUE TO SELLER	107,000.00
500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
501. Excess Deposit (See Instructions)	
502. Settlement Charges to Seller (Line 1400)	3,593.52
503. Existing loan(s) taken subject to	
504. Payoff of first Mortgage to WELLS FARGO HOME MOR	67,854.10
505. Payoff of second Mortgage to WELLS FARGO BANK, N	40,971.45
506.	
507. (Deposit disb. as proceeds)	
508.	
509.	
<i>Adjustments For Items Unpaid By Seller</i>	
510. City/Town Taxes to	
511. County Taxes 01/01/06 to 11/20/06	1,768.90
512. Assessments to	
513.	
514.	
515.	
516.	
517. INVOICE FOR REPAIRS to DAKOTA PAINT & MAINTEN	490.00
518. PAYOFF EXPRESS SERVICE FEE to AIRBORNE	20.00
519.	
520. TOTAL REDUCTION AMOUNT DUE SELLER	114,897.97
600. CASH AT SETTLEMENT TO/FROM SELLER:	
601. Gross Amount Due To Seller (Line 420)	107,000.00
602. Less Reductions Due Seller (Line 520)	(114,897.97)
603. CASH (TO) (X FROM) SELLER	7,697.97

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein. I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.