

# MICROFILM DIVIDER

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



ROLL NUMBER
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DESCRIPTION

2219

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2219

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2219**

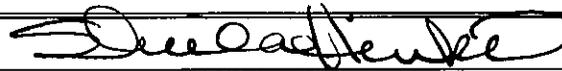
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 30, 2007**

Recorder Job Number: **2109**

Committee Clerk Signature



Minutes:

**Malcolm H. Brown – Real Property, Probate & Trust - In Favor**

### TESTIMONY # 1

Testified on amendment, describes condominium units. Wanted to shorten 9 lines to 4 for legal description.

**S Klein:** So this bill's intent is to make life easier?

**M Brown:** Less bytes in computer, shortens the legal description.

**S Heitkamp:** Why did they make that all required in the first place?

**M Brown:** Section of code was enacted in late 60's or early '70s. It was discussed at committee to change. Rather than on deed mortgage.

**S Behm:** I didn't think we needed it.

**M Brown:** If it was 1968, it was early, I just got out of law school.

**S Klein:** So this is to sort out which condo you own and it's description, it doesn't affect any other of the real estate industry.

**M Brown:** No.

**S Potter:** Very last line, exchanging "shall" to "must," is that something that has happened throughout the code whenever the code is updated?

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**M Brown:** I don't know.

**S Heitkamp:** That's where you find out what you've taken away.

**M Brown:** There is a difference between "shall" and "must."

**S Heitkamp:** They can find out where that information is, they're not hiding something.

**Q? F? Opposition?**

**CLOSE**

**Do Pass Motion by S Heitkamp**

**Second by S Behm**

**Vote 6-0-1 passed**

**Carrier S Behm**



**REPORT OF STANDING COMMITTEE**

**SB 2219: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2219 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2219

## 2007 HOUSE STANDING COMMITTEE MINUTES

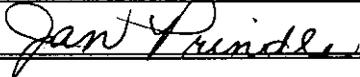
Bill/Resolution No. **SB 2219**

### House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 March 2007**

Recorder Job Number: **4338 and 4339**

Committee Clerk Signature	
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Minutes:

**Chairman Kaiser opened the hearing of SB 2219.**

**Malcolm H. Brown, on behalf of the Real Property Probate and Trust Section of the State Bar Association, testified in favor of the bill. (Testimony Attached.)**

**Representative Vigesaa:** In layman's terms could you give me an explanation as to why the shortening of the legal description is necessary.

**Brown:** You note the existing section of the code required that the instrument of deed, mortgage, etc., shall describe the unit and the land. That is the part where we have the declaration establishing a plan for condominium ownership and we are eliminating that and also in line 12, simply the reference must include the book and page. Instead of having the legal description we are saying the unit #, the name of the condominium, the recording information of the declaration and the legal description, lot 1, block 1. We're just trying to shorten up the language for a deed or mortgage.

**Representative Dosch:** So this declaration that is recorded in the book, is that recorded with the Register of Deeds?

**Brown:** Your declaration establishing the condominium is recorded at the county recorder.

**Kasper:** What if the item in the middle of your testimony that is the longer description is incorrect?

**Brown:** Mistakes in legal descriptions occur very often. There are ways to correct them. I have never found one that couldn't be corrected.

**Representative Kasper:** Is it the difference of the amount of lines or words that you are talking about in wanting to change the law?

**Brown:** Exactly.

**Representative Dosch:** If there would be a problem with the legal description, doesn't title insurance typically take care of that?

**Brown:** Title Insurance might pay to correct it. In my experience mistakes are made in legal descriptions. I did an abstract yesterday that had a mortgage with the wrong legal description and it showed up on this parcel when it is totally unrelated to it. Somebody will have to correct it, but it can be done. If it involves a mortgage that becomes uninsured, the title insurance company would have to 'fess up.

**Representative Thorpe:** Can you tell us what occurred to bring this forward to us?

**Brown:** Our title standards committee meets 3 – 4 times a year and there are not many changes over the years but we are constantly talking about real estate issues that show up. Members of the committee are from all over the state and in course of discussion somebody said "why do we need such a long legal description for condominiums, let's shorten it up."

**Representative Thorpe:** I thought in the transfer of property you still needed a legal description of where the parcel of land sits.

**Brown:** This still does say that specific geographic location.

**Representative Thorpe:** And that passes muster?

**Brown:** It does.

**Representative Zaiser:** If one were to count the words in the initial description using numbers as a word, I counted 34 in the top and 33 in the bottom. I'm wondering if this is a representative sample is this really worth it?

**Brown:** I look at what we currently put on a deed or a mortgage pursuant to our current

statute and our title standards and I looked at what I believe would be the description if this law were adopted, and it seems to be less; but I didn't count the words.

**Representative Kasper:** Let's go three transaction down the road, each time you are going to sell the property doesn't the title opinion have to go back to that original book to verify that it is the legal description you are talking about. So each time you do that you are looking back at what you are eliminating to make sure that it's there anyway. Isn't that the way it works.

**Brown:** As you look at an abstract in doing a title opinion, you are constantly aware of what our title standards say as it relates to a particular situation or what the current law says as it relates to the situation. Yes, if there was a deed in 1995 and then 2008, I would look at that complete chain of title and I would know that the law changed and that my current legal description is in fact correct.

**Representative Kasper:** You would always go back to that original description and that all the subsequent descriptions are also correct, would you not?

**Brown:** Certainly.

**Representative Kasper:** So why would you not want to repeat it?

**Brown:** The thought of the title standards committee by proposing this change was to shorten up the description for subsequent transactions. We can't change what's already recorded just like the declaration itself is already recorded and you can't change that. We're looking for the future as to how you would use a legal description in a deed or mortgage.

**Representative Kasper:** But you always go back to that original document to make sure it's correct so therefore would you not always refer to that original description when your are checking for the title transfer.

**Brown:** That document is in fact of record. It is what it is. Subsequent description if this law were adopted would just be the same legal description except it wouldn't have as many words in it.

**Representative Dietrich:** You are talking abstracting, but in most cases you do not abstract, you use title insurance so you are not going back to the long version of the description you will probably only have the short versions in title insurance will you not?

**Brown:** The title insurance policy must be supported by an attorney's opinion based on examination of the title. The title insurance companies have access to the records in the county recorder's office so they examine those. The procedure isn't any different. The description you use today and the description you use tomorrow may be different but the procedure isn't any different and they refer to the same unit. That's the purpose of this bill.

**Representative Zaiser:** How many other states use this process of the abbreviated description?

**Brown:** I frankly don't know. Every state has condominium laws, ours was passed in the '60s and what its source was I have no idea.

**Vice Chairman Johnson:** You mentioned the title standards committee—who makes up that committee and who do they represent?

**Brown:** They are part of the real property section of the state bar association. The real property section appoints attorneys to the committee. They are attorneys that primarily deal with real estate law and real estate transactions.

**Representative Vigesaa:** What is the unique about condominium property that makes this only for condominiums?

**Brown:** A condominium requires a declaration where the person who is going to create this condominium and they make the declarations. It's on a particular parcel of real estate but it

involves the relationship of the units within that parcel so that's why the legal description is longer.

**Hearing closed.**

**Later on the same day, Chairman Kaiser opened discussion of SB 2219.**

**Representative Kasper:** I don't like this bill. I live in a condominium. The shortcut is not that much of a shortcut. I'd like to see the full description there so that when the abstract is being reviewed you have it in front of it. I think this was an "over coffee bill" where they talk about there might be a problem, let's shorten it up and they decided to do it. I'd rather stay the way we are at.

**Representative Dietrich:** I asked the question of Mr. Brown about legal clarification of abstracting title insurance. Abstracts go all the way back and in title insurance they have to have an opinion of the title and they go all the way back the same as an abstract. It's just don't go through the formal analysis of bringing of the abstract up. Several counties have gotten away from abstracts. Fargo will shortly, Grand Forks is. They don't use them farmland, condominiums, town homes or residential property. They don't even use them for commercial anymore. All the information is kept on record. The long version is always kept in place. It's always there. When they a transfer they always go back to where it started—the first time you have a legal description. They always have to go back. They pick up easements as they go. Where we run in to problems in the real estate industry in transferring property is when the contract is written before an attorney gets it to take look at the opinion. When we write 65 words instead of 33 words it gives us more of an area to make a mistake. I will do a contract on a piece of property and I have to do an addendum to the purchase agreement full of all the description that we have here. When I do an addendum to the contract it gives me one more step where there can be a mistake made. If we make it a little bit shorter it still gives us the necessary items that we need to get the property sold and it gives the title company or the

abstractor enough information so they can go back and get an opinion. It just shortens things up and doesn't have any real effect on the transfer of property.

**Representative Vigesaa:** I'm just looking at the words that disappeared out of the first description and they are not all that important. I don't have any problems with this. You use half as much space and it gives the accurate description.

**Chairman Kaiser:** I looked at the last part. Is that undivided property component important to say in a condominium? Isn't it important to talk about that in a condo development?

**Representative Vigesaa:** Yes, it is. When they come to that they will pick it up when they go back in the title search or abstract search. That will be there.

**Representative Dosch:** I think it's a good thing. Any time you can shorten it up it reduces the chance of errors in the future. The declaration has already been recorded so the information is there. We're just shortening the reference which is going to eliminate errors down the road. I don't have any problem with it at all.

**Representative Thorpe:** I'd like to address this to Mr. Dietrich. I grasp what is going on here. Are you satisfied that there's no problem with getting title insurance on a description like this?

**Representative Dietrich:** Very much so. What this does is just gives you basically a beginning point on a road map. Then you take the road map back into the title search and the attorney will do his opinion back to and end up with the same description, plus anything else that might have been added to it such as easements or that type of things.

**Representative Thorpe:** The title insurance companies have no problem with this in terms of writing title insurance?

**Representative Dietrich:** They would like it very much.

**Chairman Kaiser:** If you read the language in the bill and not look at his example, it says "may describe the individual unit, the common element, the land, or limited common element

by reference to appropriate numbers or letters as they appear on the declaration provided.” Is that going to be enough because there is that “or” in there; we’re not saying “and.” If I did one of those does it qualify? Is that enough if I do just one of those items? If I said just “unit number 5” in my short description, would that be enough?

**Representative Dietrich:** If you said just the unit number you would not be covered. You still have to give the lot and block.

**Chairman Kaiser:** That’s my point. I don’t think that’s what these words say. I want to make sure we’re doing this right because this is an area I do not understand.

**Representative Zaiser:** I just want to allude again to the potential for mistakes. In being a planner and doing legal descriptions with subdivisions, I can attest to you that the potential for mistakes in legal descriptions is extraordinarily high in agreement with Mr. Brown. This is a good thing because we eliminate those mistakes.

**Chairman Kaiser:** I like the difference in the examples he gave us but if this law passed, is that what would happen?

**Representative Vigesaa:** All of these things refer to as they appear on the declaration. All things being equal, this is a good thing. I think we are doing the right things here in terms of other appropriate things because we eliminate those mistakes.

**Chairman Kaiser:** The declaration is where all the decision making is.

**Representative Dietrich:** The declaration is the formation of your association. Everything that has to do with that association’s property is in that declaration.

**Chairman Kaiser:** So if you just said unit, you would be able to identify it.

**Representative Dietrich:** Yes as it says “must include the page where the property is recorded.” Some of these declarations may be as heavy as 45-50 pages.

**Representative Vigesaa:** I move a Do Pass.

**Representative Thorpe:** I second.

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House Industry, Business and Labor

Bill/Resolution No **SB 2219**

Hearing Date: **5 Mar 07**

**A roll call vote was taken: Yes: 13, No: 1, Absent: 0**

**Representative Vigesaa will carry the bill.**



**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2007 12:37 p.m.

**Module No: HR-41-4440**  
**Carrier: Vigesaa**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2219: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2219 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

SB 2219

Senate Industry, Business and Labor Committee  
January 29, 2007

Senate Bill 2219

Testimony of Malcolm H. Brown on behalf of the Real Property,  
Probate and Trust Section of the State Bar Association.

Senate Bill 2219 relates to the legal description required to sell or  
mortgage a condominium unit.

Current law and our Title Standards (NDTS 15-04) require the  
following description:

Unit No. 5, Paradise Condominium, a condominium  
created under a Declaration Establishing a Plan for  
Condominium Ownership, recorded in Book 126 of  
Miscellaneous, Page 25 et. seq. and erected upon:

Lot 1, Block 1, First Northern Pacific Addition  
to the City of Bismarck, Burleigh County, North  
Dakota, according to the certified plat thereof;  
together with the undivided interest in the  
common elements declared appurtenant thereto.

SB 2219 would permit the legal description to be as follows;

Unit No. 5, Paradise Condominium, under Declaration  
recorded in Book 126 of Miscellaneous, Page 25, on Lot 1, Block 1,  
First Northern Pacific Addition to the City of Bismarck, Burleigh  
County, North Dakota.

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House Industry, Business and Labor Committee  
March 5, 2007

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