

2013 SENATE JUDICIARY

SB 2165

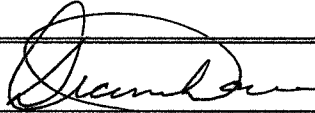
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2165
1/23/2013
Job #17581

☐ Conference Committee

Committee Clerk Signature



Minutes:

Relating to transfer on death deed

Senator David Hogue - Chairman

Grant Shaft - Representing the Real Property Section of the State Bar Association - Explains that this bill deals with an amendment to Section 30.1-32.1-12 which is the transfer on death deed statute. He said ND law has been adopted a transfer on death deed that is utilized by most states across the country. He said the issue that has come up is attorney's examining title whereby property is passed by virtue of transfer on death deed are reluctant to pass title for an 18 month period from the date of death because of the retroactive claim period provided in the statute which is 18 months. He goes on to explain that under this the 18 month period cannot be enforced against purchasers of good faith or encumbrances of good faith. Attorney's examining title can pass marketable title on the transaction. He also mentions that any proceeding to enforce liability has to be limited only to the net value of the property.

Senator Hogue - Asks for an accepted definition of good faith customer.

Shaft - Replies that there are several definitions in the code but is defined as a bona fide purchaser. Mr. Shaft explains how the chain of title works and how the death deed is different.

Senator Berry - Asks what happens when a claim comes forward.

Shaft - Responds that under this provision if a claim comes forward the property will have been sold but there still can be a claim against those children for the net value of the property that was conveyed. A claimant can still go after the net value of the asset but the real estate can now be transferred. The good faith purchaser is out of the loop, their title has been cleared.

Opposition- 0
Close the hearing

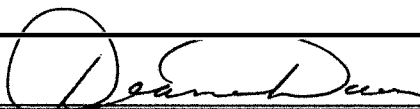
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2165
1/23/2013
Job #17644

☐ Conference Committee

Committee Clerk Signature



Minutes:

Committee work

Senator David Hogue - Chairman

Committee discusses net value and the costs involved in transferring and asset.

Senator Sitte moves a do pass
Senator Berry seconds

Vote - 7 yes, 0 no for a do pass

Senator Sitte will carry

Date: 1-23-13
Roll Call Vote #: 7

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2165

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 17 No 0

Absent 0

Floor Assignment S. Sitte

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

REPORT OF STANDING COMMITTEE

SB 2165: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2165 was placed on the
Eleventh order on the calendar.

2013 HOUSE JUDICIARY

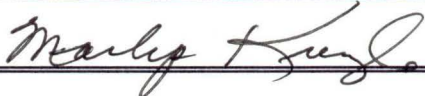
SB 2165

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2165
March 26, 2013
Job # 20492

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to transfer on death deeds.

Minutes:

Chairman Kim Koppelman: Opens SB 2165.

Grant Shaft, ND Bar Association and Real Property and Trust Association: He is appearing in behalf of the State Bar Association of North Dakota. This bill deals with death deeds. This deals with language that is in Section 3 of the current statute which provides any proceeding to enforce the liability within 18 months. The attorneys are having difficulty in clearing the title in this 18 month period.

Chairman Kim Koppelman: You have person who owns it is deceased has a transfer on death to another person, they sell this property quickly, another person comes along and they pay for the property, they think this is free and clear. Is the person who sells the property responsible for the mortgage?

Grand Shaft: This bill wouldn't address that not all. This deals with the estate of transfer of property to the first person and someone else said it was fraudulent transfer on death deed.

Vice Chairman Larry Klemin: The typical mortgage has a due on sale clause and wouldn't a transfer on death deed be considered a sale on mortgage clauses?

Grand Shaft: The lenders are still working through that.

Vice Chairman Larry Klemin: This provision on transfer death on death deed was part of uniform law and is probably the same in most of the states that have adopted that. Did you look to see what other states have adopted this or what the Uniform Law Commission is doing on this?

Grand Shaft: I have not looked at what the Uniform Law Commission is doing, but I am a member of the real property section of the Minnesota Bar Association. At their annual meeting they discussed that they have the same issue.

Vice Chairman Larry Klemin: The remedy is to bring action against the person and not those on the mortgage.

Grand Shaft: That is correct. If there was claim that arose under Section 3.

Rep. Bill Kretschmar: On line 11 should we say for "value" too.

Grand Shaft: Yes

Chairman Kim Koppelman: This bill is designed to do two things: to create a clean transaction and protect the rights of an end purchaser and deliver clean title to that person.

Grand Shaft: That is correct.

Nick Hacker, North Dakota Land and Title Association: (19:14 to 21:15) We support this bill. Two things really are happening here: This bill really strengthens the statute limit and it reduces the time line to 18 month gap and it really clears up a lot of the lenders concerns.

Vice Chairman Larry Klemin: What are the underwriters for the title insurance saying about this?

Nick Hacker: We don't like transferring death deeds at all. The reason is that we cannot determine the capacity of the transferor when they sign that deed or how many.

Vice Chairman Larry Klemin: Isn't there an acknowledgment requirement on the transfer of death deed?

Nick Hacker: There is an acknowledgement.

Chairman Kim Koppelman: There is no opposition to SB 2165 so the hearing is closed.

Rep. Bill Kretschmar: I move that we amend on Line 11 after the word property we insert the words "for value".

Rep Maragos: Seconded the motion.

Voice vote and motion carried.

Rep Delmore: I make a motion Do Pass as Amended.

Rep Brabandt: Seconded the motion

Do Pass as amended Yes 13 No 0 Absent 0 Carrier Rep Kretshmar

March 26, 2013

YK
3/26/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2165

Page 1, line 11, after the first "property" insert "for value"

Renumber accordingly

Date: 3-26-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2165

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried

On Line 11 - to add the word "for value" after the word property.

Date: 3-26-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2165

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2165: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2165 was placed on the Sixth order on the calendar.

Page 1, line 11, after the first "property" insert "for value"

Renumber accordingly