

2013 SENATE JUDICIARY

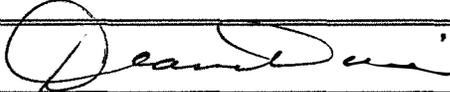
SB 2167

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2167
1/23/2013
Job #17579

Conference Committee

Committee Clerk Signature 

Minutes:

Senator David Hogue - Chairman

Relating to the authority and duty of an abstractor under certificate

Grant Shaft - Real Property Section - ND Bar Association - Explains that he is also a member of the Land Title Association and is a registered abstractor and a title insurance agent. He said the bill deals with a portion of the code that talks about abstractor's certification and the duties of abstractors or those who hold certificates of authority to produce abstracts of title. He said what this legislation attempts to address is a situation where a party has paid for a title insurance policy and subsequently has either lost their original policy or is needing a copy and goes to their title agency and requests a copy. He said there are varying protocols on how those agencies address this. He goes on to say that dealing with marketability of title has evolved considerably in the last ten years. He says most counties have all their records online and others are moving towards that. Also most transactions have evolved into title insurance issued from title companies. He explains title insurance and the lack of an abstract. He says what this bill addresses are if you are the insured and you need a copy of the policy you are entitled to a copy if you need it. He recommends two amendments dealing with subsection 3. He explains the amendments.

Senator Hogue - Asks if wants a stub going back 20 years the abstractors have a duty to do that now.

Nick Hacker - ND Land Title Association - He says they have worked with the Bar Association on the amendments. He relates if this isn't amended then an uninterested party could come in and ask for a copy of your title. He said they would like the "not free of charge" dropped. He says they would like the ability to recoup their costs for providing a copy.

Senator Nelson - Asks if the policy were to wash away in a flood would they have to pay for it again.

Hacker - Says that in practice there is a limited or no charge to reproduce a policy. He says he is talking about a document handling charge to retrieve the records.

Senate Judiciary Committee
SB 2167
1/23/2013
Page 2

The committee discusses the proposed amendment change.

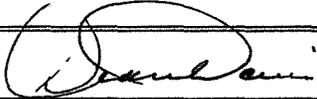
Close the hearing on 2167

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2167
1/23/2013
Job #17646

Conference Committee

Committee Clerk Signature 

Minutes:

vote

Senator David Hogue - Chairman

Committee work

The committee discusses the proposed amendment. Senator Hogue discusses setting a price per page for getting a copy of title insurance policy. He says it is a pretty simple matter to produce a copy of it. The committee thinks it should be free of charge. Senator Sitte reads how the bill will read after amended.

Senator Sitte moves the amendment
Senator Nelson seconded

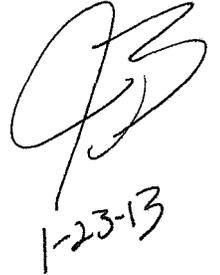
Verbal vote - all yes

Senator Sitte moves a do pass as amended
Senator Armstrong seconded

Vote - 7 yes, 0 no

Senator Armstrong will carry

January 23, 2013



Handwritten signature and date: 1-23-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2167

Page 1, line 18, after "Upon" insert "written"

Page 1, line 18, after "request" insert "by the insured person"

Page 1, line 19, remove the colon

Page 1, line 20, replace "a. A" with "a"

Page 1, line 20, replace "; and" with an underscored period

Page 1, remove lines 21 and 22

Renumber accordingly

Date: 1/23/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0461.01001

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

Motion Made By S. Sitte Seconded By S. Nelson

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

Total (Yes) _____ No _____

Absent Verbal vote all yes

Floor Assignment _____

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

Date: 1-23-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2167**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0461.01001

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) 7 No 0

Absent 0

Floor Assignment S Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2167: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2167 was placed on the Sixth order on the calendar.

Page 1, line 18, after "Upon" insert "written"

Page 1, line 18, after "request" insert "by the insured person"

Page 1, line 19, remove the colon

Page 1, line 20, replace "a. A" with "a"

Page 1, line 20, replace ": and" with an underscored period

Page 1, remove lines 21 and 22

Renumber accordingly

2013 HOUSE JUDICIARY

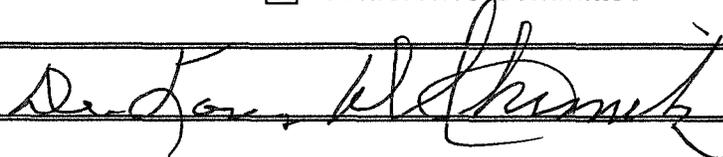
SB 2167

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2167
March 26, 2013
Job # 20494

Conference Committee



A rectangular box containing a handwritten signature in black ink, which appears to be "Kim Koppelman".

Explanation or reason for introduction of bill/resolution:

Relating to the authority and duty of an abstractor under certificate.

Minutes:

Handouts 1,

Chairman Kim Koppelman: Opened the hearing on SB 2167.

Grant Shaft, ND Bar Association: The intention of this bill is that we have situations where title companies when they see the holder of a certificate of authority is sometimes referred to as an abstract or Title Company. There were requests made for a copy of a title policy from the insured and in certain circumstances there have been situations where either the abstractor or the company has not wanted to provide that copy so the language as you will see in section 3 indicates by written request by the insured person a holder of certificate of authority which has issued an owners title insurance policy in lieu of preparing an abstract shall furnish the requester with a copy of the owners title insurance policy free of charge. From the bar associations standpoint our only interest is that if there is an individual who has paid for a title insurance policy and for one reason or another they have lost their copy we want there to be a mechanism for them to obtain a copy from the assuror.

Opposition:

Nick Hacker, ND Land Title Association: We are here in opposition unless amended and so we are looking for some potential changes to the bill. We supported the bill in the Senate as amended, but as we looked closer we realized there are some additional changes that we believe are necessary. Abstractors are not necessarily the person that issues a title insurance policy. Many abstractors in the state of North Dakota do not issue title insurance. We need a proof of evidence of title to issue title insurance. That comes in two forms; an owner's title insurance policy or it comes in the form of an abstract with a title opinion. This section is asking only companies that are abstractors to provide a copy of that prior title evidence. There are attorneys in the state and also just title insurance companies that do not hold a certificate of authority to abstract that can issue title insurance

policies. They would not fall under this new statute. We are asking that the statute be removed from the abstractor portion and these changes be applied to some other part of the code that would apply to all title insurance issuing agents. Secondly, there is a provision at the very bottom of the bill that provides a copy that owner's title insurance policy free of charge. There will be additional testimony behind myself. I manage a title company in Williston and we don't commonly get requests for owner's title insurance policies from either the insured or another competitor through the insured. So what we are really talking about here are some of our more medium markets where it is easier to get a copy of owners title insurance policy from a competitor and use that as their prior title evidence to issue a new policy than it is to go and put the work and effort into abstracting the property; getting a title opinion; and paying for that title opinion to the attorney. So many of the companies in the state we called these master files. When a subdivision is platted and we go out and abstract that subdivision and we get a title opinion on it and we create a master file; we can use that master owner's title policy in subsequent transactions and not necessarily have to abstract every single one of those new transactions. New companies that come in that did not put the effort into abstracting it. Generally these subdivisions that did not put the effort into abstracting it they can take an employee at least a full day of work or more. Then we get a title opinion which we pay for and what we are saying in this statute is that my competitor through a buyer; say an individual wants to refinance their home; say that person is going to come over and say we want a copy of that title policy and we want it free of charge. We are asking that the committee remove the free of charge language. The state of North Dakota doesn't do it for free either. Open records do cost money and this is not what we would think of a property casualty insurance binder or your auto insurance binder. This is the title evidence to conduct a transaction.

Rep. Lois Delmore: What is the fee for this now?

Nick Hacker: Generally we are talking about \$25.

Rep. Diane Larson: If you have somebody does a title search for you do you then get a copy of it as the landowner of that? Would you be able to give a copy of that to a competitor?

Nick Hacker: Absolutely. The policy is listed with a loan amount. When we issue that policy and the purchaser pays for that policy they get a copy of that policy. We are not talking about consumers asking for a copy of their policy here. That is the peace we are talking about.

Chairman Kim Koppelman: When you charge for this now, you have gotten paid for this work completed once, are you trying to get paid again for some of that or are you merely saying that you have an interest in the product? Are we talking about a photo copy charge or what when we are talking about \$25?

Nick Hacker: The staff time it takes. Sometimes we are talking about titles many years old. No we are not looking to charge an additional owners policy.

Chairman Kim Koppelman: If we take this out and there is nothing to limit you from saying fine, but it will cost you \$1000. How does that work in the market?

Nick Hacker: I am the owner. The market practice now is setting it at \$20-\$25 based on the cost of reproduction. The purpose of the bill is not because somebody was charging \$1000.

Vice Chairman Larry Klemin: The insured might not be an individual; it might be someone who holds a mortgage on the secondary market. Is that right?

Nick Hacker: That is correct. There is a difference between owner's title insurance policies and lenders policies are different products. The lenders policy insures and interest in the land; it does not insure full equitable ownership of real estate so we cannot use a lenders policy as prior title evidence. There may be a company like and LLC or a Trust and those all fall under the definition of an individual or person in the code.

Vice Chairman Larry Klemin: The purpose of title insurance is to insure the title against some defect in title. If there is a defect discovered later in the title can they go back against the issuer of that first title policy?

Nick Hacker: Yes they will go back to the period of time that the first policy covered.

Vice Chairman Larry Klemin: So the insurer, who is not the title company we are talking about, but they would make a claim against under that original policy. So there is some liability that keeps on flowing as this process goes forward. We are talking about title insurance here and you are asking if this be moved to a different part of the ND Century Code. We have a chapter on title insurance under the insurance title; which I think is in 26.1 and I don't know where else it would go. I don't recall seeing a requirement under any of the other kinds of insurance that are issued for property or life insurance or any other kind of insurance that if you need a copy of your policy any of those other companies had to issue anything free of charge or that the legislature decided how much it was going to cost them to provide a copy. Do you have any thought on this?

Nick Hacker: There is no other line of insurance that is mandated by statute to provide a free copy of a policy. We would be singled out.

Vice Chairman Larry Klemin: The title companies here are really agents of the underwriter or the company that issues the policy and we don't go back to an insurance agent in ND and set the fee that they have for giving somebody a copy of a policy.

Nick Hacker: No. This bill came upon a very unique situation out of the valley that is not occurring in the rest of the state. We oppose the bill.

Vice Chairman Larry Klemin: would you go over that unique situation again.

Nick Hacker: We did not introduce the bill. I am not 100% familiar with the situation.

Vice Chairman Larry Klemin: What is your understanding of it?

Nick Hacker: My understanding is it was one company in the valley that was having a hard time getting a copy of an owner's policy. I am not aware if that was an abstract company? By law you have to abstract the property so not body should have been hung out to dry to be able to conduct the closing. That is already covered in our abstract statues. That is why I call it a unique situation that that abstract order did not get full filled; that complaint should have went to the abstracting board which regulates abstractors.

Vice Chairman Larry Klemin: Someone is trying to save money by getting an abstract for no cost?

Nick Hacker: That might very well be.

Chairman Kim Koppelman: You were advocating removing the free of charge language; you were not suggesting a dollar amount were you? It would be \$25.

Nick Hacker: Yes that is right.

Chairman Kim Koppelman: Your other request is that it would be in a different section and perhaps the one Rep. Klemin named. If those two things occurred do you still oppose the bill?

Nick Hacker: We would be comfortable with the bill because it is already in practice.

Denise Mcquich, Office Manager at ND Guarantee and Title, Bismarck-Mandan: I do oppose the bill. We have a unique product in that owner's policy can be used by our competitors to write title insurance in the state of North Dakota. Right now you would not take your life insurance to another life insurance company and they are going to work off that life insurance policy. They can do that with an owner's title policy because we have done the background. We created an abstract; we got an attorney to redo it; and we issued an owner's policy; which is title evidence in the state of North Dakota. If we release that to a competitor they can use that to issue title insurance. What typically happens in title insurance is after our closing the premiums have been paid; we will issue the owners title insurance policy and we send a copy of that policy along with the recorded warranty deed and documents to

owner of the property and the lender documents. We don't typically see that borrower coming in and saying I lost my owners policy can I get a copy of it. We typically don't charge for that because we know they are asking for that for their private records. (See Handout #1) this form is asking the title company to release their owners policy to another title company because they are going to use our title insurance to write title insurance and to do a closing. When they are asking for it our competitor does not have the title evidence needed to write title insurance. It has to be signed by the owner of the property so we can release this information. When these come into our office one of my staff members makes a folder to goes through our records to see if we did actually issue a title owners policy for this property. This takes time away from work that we need to do for our company. We are asking a fee be allowed for this time that our staff members are dedicated to researching and processing that request. Also because they are using our title evidence to rewrite their title insurance and it is a convenience.

Rep. Andy Maragos: Do you do what your competitors do?

Denise Mcquich: Yes we do.

Vice Chairman Larry Klemin: In the form you handed out would be a ND Guaranty Title Company form?

Denise Mcquich: Yes

Vice Chairman Larry Klemin: Could you also use a copy of the original that was issued to an owner?

Denise Mcquich: They could use that form and now we have a new competitor and they very much benefit from this because they don't have the archives that we would have where we have dedicated the time to create the abstracts to get the owners to issue these owners policies. The new title companies that are coming in if they get these will start building their data base based off of ours.

Vice Chairman Larry Klemin: Could you ask the owner for it?

Denise Mcquich: Yes they could go to the owner ask the owner for their policy. Typically if people are moving they might not have access to their documents.

Rep. Gary Paur: In that instance with people moving or not being aware of what it is, is there ever a request that it is sent to several companies hoping to hit the right one.

Denise Mcquich: Good question. They might. If they see on the deed one of our file numbers is on the document they probably are going to start with us.

Rep. Lois Delmore: Can you tell me how many title companies there are in the state? And are you required to be licensed?

Denise McQuich: I don't know the exact number of title companies in the state. Yes we do have to be licensed.

Nick Hacker: There are approximately 200 in the state.

Rep. Kathy Hogan: Is this happening throughout the whole state or is this primarily a Bismarck issue?

Denise McQuich: We have had this happen for many years. In Bismarck-Mandan market it is common. In our Dickinson market it is very common and it is going to be common in the markets where you have more than one Title Company working.

Rep. Kathy Hogan: Typically what is the fee you charge?

Denise McQuich: Typically we charge \$25. It is a standard fee.

Vice Chairman Larry Klemin: The whole issue seems to be the fee since you are all doing this so if we didn't say anything in this bill. All these rates are set through the insurance department and not set by the legislature. Why isn't this insurance department issue?

Denise McQuich: The fees for the original when we issue the title policy would be set by the state. We are asking for the duplicating work that it takes staff members a lot of time.

Vice Chairman Larry Klemin: The whole issue is about title insurance and that is regulated by the insurance department. Has anyone made complaints with the insurance department?

Denise McQuich: Not that I am aware of at this time.

Nick Hacker: Title agents are licensed; title insurance agent companies are not licensed in North Dakota so the issue agent is an individual person within your company. They are regulated and the underwriters file their rates with the insurance commissioner and that is on the insurance rate. It is not a rate review so it is a little bit different. Competitive market forces drive the pricing of that product and they are filed with the insurance commissioner so that all agents are issuing based on the same rates with the different underwriters. There are roughly five underwriters in North Dakota.

Vice Chairman Larry Klemin: this request is not being made to an individual agent; it is being made to a company that is an agent, right?

Nick Hacker: The agency relationship is created through a contractual relationship between the underwriter and the title insurance agent company. The person that writes that policy and signs it that is the point we are regulated as a title insurance agent in North Dakota.

Vice Chairman Larry Klemin: How come they are not sending that request to the individual who signed that policy instead of some company he worked for?

Nick Hacker: Licensed title insurance agent is an individual working on behalf of a company. They are responsible to review that policy and then sign that policy on behalf of the company. That work is the company's work so the request is the issuing agent which is not an individual; it is an agency.

Chairman Kim Koppelman: Who owns the title abstract or title insurance policy?

Nick Hacker: The owner is the insured.

Chairman Kim Koppelman: That would also be true of an abstract that was prepared and paid for by someone who would be the owner.

Nick Hacker: Yes whoever we did the abstract for is the owner. They are delivered to you. When we go out and so a master abstract as a company and we pay the attorney for the title opinion now we would have to give that away for free according to the bill in front of you.

Chairman Kim Koppelman: Are you aware of the problem that brought us this bill?

Denise McQuich: Yes that is correct.

Chairman Kim Koppelman: There aren't that many abstract and title companies around and some places only have one so it becomes a monopoly so you talk about competitors coming in well come the free market.

Tammy Sticker, Manager Bismarck Land and Title: We are backing everything that was said here earlier. We also feel it would be beneficial to have that language removed and able to charge a fee for that. In our case most of our files are stored off site so when we do get requests we have to send a person over to retrieve that file, bring it back, make the copies, fax, email so it is mostly personnel time involved to do that.

Chairman Kim Koppelman: Some companies are going out and doing this on their own and not at the request of a home owner which is a typical situation when a mortgage is being created or something like that. In that kind of scenario then I assume that company would turn around and sell title insurance to property owners within that area.

Tammy Sticker: Cannot answer that.

Chairman Kim Koppelman: when a company does that I assume that it is a business decision. They do this thinking they are going to make some money in that process by offering title insurance to people who live there and whose property they have done the title search on. Is that correct?

Nick Hacker: They are getting a copy of previous policies and they can use that as title evidence to issue a new policy which they already have the order for. Generally it is a loan transaction and there is 100% confidence that a policy is going to be sold. So they pay the \$25 to use that as the title evidence to sell a new policy.

Chairman Kim Koppelman: What is the difference between a piece of property where there is been a title search before and there is title insurance on that property and a newly platted subdivision where there has to be a new work done, correct?

Nick Hacker: Yes

Chairman Kim Koppelman: You are not going to do that on your own are you?

Nick Hacker: Correct. There would have to be a search and another opinion.

Chairman Kim Koppelman: Is that what is happening sometimes without a request from the property owner?

Nick Hacker: Here is an example: There are two title companies in Williston. Sometimes I do the master on the subdivision meaning I abstracted the lands that got platted into a lot of different lots. Then I move forward with an owner's title I can issue off of and get it reviewed by an attorney on each individual lot as we move forward. It streamlines lots of different things. It saves customers money because they are not paying for an abstract from patent to the date of the closing; they are paying for a supplemental abstract from the point in time when the subdivision was platted so we save time and money. If we have to abstract from patent every order that came in the door we would really slow down the closing process in North Dakota.

Chairman Kim Koppelman: So this is important for that reason.

Nick Hacker: Yes it is. When my competitor has the master I might make the business decision that says there is a really good chance for them to get some orders out of this new subdivision; we are going to stay ahead of the curb and we are going to abstract it and bill them. That is what we are talking about here.

Chairman Kim Koppelman: when people come forward to get these opinions what do they pay for; from patent to date or from the platting to date of the loan.

Nick Hacker: If I don't have to recreate the entire abstract they pay for the supplemental abstract so we are talking about something is from one to two to maybe five entries. Abstracting pricing is set by statute. It is \$10 per entry plus \$100 for certification and a \$5 charge for the name search that is part of that abstract. If you have to do three or four entries we are talking about \$130-\$150; versus if it is a 100 entry abstract from patent that charges them \$1000 plus the names so there is a benefit for that master file. We save customers money and we save a lot of time.

Chairman Kim Koppelman: So you save yourself time later, but do you ever recouped the cost of what that time to do that in the beginning?

Nick Hacker: No.

Chairman K. Koppelman: Why don't you just wait until a paying customer comes along and says I need this?

Vice Chairman Larry Klemin: You are talking about a stub abstract, but does every title company do stub abstracts before they issue title insurance commitment or policy?

Nick Hacker: No not necessarily. We need prior evidence; either in form of an owners policy by an attorney or through an abstract with a title opinion on it from an attorney.

Vice Chairman Larry Klemin: The original abstract was used to issue this master policy and I thought I understood you to say that there would be a stub abstract prepared on the individual lot. Is that process followed by everybody?

Nick Hacker: It is two options. It is up to the business if they want to issue a supplemental abstract or they want to do a search. Generally it is almost a wash by the time you match a supplemental abstract charge to that of a search charge.

Hearing closed.

Rep. Klemin: I have a problem with this bill. We are being asked to do something by one group to make it a little more convenient for another group to save some money on some things. Now we are being asked to put this in a different chapter because it only applies to title companies that issue title insurance and not all abstractors do that. The free of charge; we don't ask anybody to do that. Even the state charges for stuff. I think the free market will handle this by itself or maybe the insurance commissioner should be handling.

Do No Pass Motion Made by Rep. Klemin: Seconded by Rep. Paur

Rep. Klemin: I got the impression from Grant Schaff that he does not care too much about this bill either.

House Judiciary Committee
SB 2167
March 26, 2013
Page 10

Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Ben Hanson

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

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2107**

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. Klemin Seconded By Rep. Paur

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) 14 No 0

Absent 0

Floor Assignment Rep. Hanson

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

REPORT OF STANDING COMMITTEE

SB 2167, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2167 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2167

3-26-13

SB 2167

1

Release of Owners Policy Authorization

I/We authorize Bismarck Title to release our Title Owners Policy for the following property to North Dakota Guaranty & Title Company.

Legal:

Property Address:

Owner's Name:

_____ date _____

Signature