

2015 HOUSE JUDICIARY

HB 1141

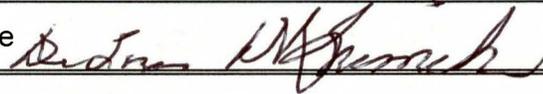
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1141
1/19/2015
22111

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to inclusion of a dispute over disposition of earnest money or other money deposit arising from a contract to purchase real property within the jurisdiction and venue of small claims court proceedings.

Minutes:

Testimony 1 & 2

Chairman K.Koppelman: Opened the hearing on HB 1141 with testimony in support.

Rep. D. Larson: I am sponsoring a very simple bill that just if there is a dispute over earnest money that it be handled in the jurisdiction where the property resides; not where either the buyer or seller resides.

Nancy Willis, Government Affairs Director for the ND Assoc. of Realtors (NDAR).
(See testimony #1) (1:40-2:30)

Casey Chapman from Chapman & Chapman: Attorney for ND Assoc. of Realtors: I am the one typically on the phone when a broker calls from Grand Forks or Fargo or anywhere and says we have earnest money and we have buyers and seller disputes going on. What are we going to do? (See testimony #2) (03:22-8:50)

Rep. Lois Delmore: Now to both parties have to be present before the judge in order for the determination to be made?

Casey Chapman: They can only be required to be present at this point in the county of the defendant's residence.

Rep. Lois Delmore: Are both sides usually present in these proceedings?

Casey Chapman: Yes both parties would be present.

Rep. Lois Delmore: Is this pretty common especially now as we are seeing more real estate being sold throughout the state.

Casey Chapman: Yes it is. I see this much more than we did in the past.

Chairman K.Koppelman: Where should this be placed in the bill? The current statute that you are amending actually deals with a claim in regard to a defendant's release of a certain property and it can be either where the defendant resides or in the county where the property is located. We are changing that and we have not even addressed that.

Casey Chapman: When I looked at earnest money disputes I do agree that in the past it said in the county where the defendant resides. It seemed that it was more appropriate that in both cases it should occur where the real property is. That is not a deal breaker on this bill. If we put everything in that same county it is fair to everybody.

Chairman K.Koppelman: Who is it most convenient for? The attorney's or the folks that might be dealing with the property where it is located.

Casey Chapman: The true beneficiaries of this bill are the parties to the transaction. The law is already established that if there is no resolution of the earnest money dispute and the broker feels that they are unable to release it; the law in unclaimed properties says at a certain point they simply release it to the state of ND.

Opposition: None

Hearing closed.

Motion Made Do Pass By Rep. Lois Delmore: Seconded by Rep. K. Hawken:

Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Vice Chairman Karls

Date: 1-19-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1141

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. Delmore Seconded By Rep. K. Hawken

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. K. Karls

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

REPORT OF STANDING COMMITTEE

HB 1141: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1141 was placed on the Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1141

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1141
3/17/2015
24959

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver for Dawn Penrose

Minutes:

2 Attachments

Chairman Hogue called the committee to order and opened the hearing on HB 1141.

Representative Diane Larson: District 30. This is a bill that defines where a small claims dispute over earnest money should be handled.

Nancy Willis: Government Affairs Director, North Dakota Association of Realtors. See attachment #1.

Casey Chapman: Attorney for North Dakota Association of Realtors. The origin of the bill is basically this: over the course of time what we have found in the real estate industry is a concern that has arisen over earnest money. Earnest money is the money that is put down when somebody goes to buy a house, the amounts that we are talking about are \$500, \$1,000, \$1,500 and those are amounts that are within the jurisdiction of the small claims court which goes up to \$15,000. What has happened over time is that we will have situations, especially in recent years, where there is a buyer who decides to put earnest money down on a house that is owned by a seller. What this bill attempts to do is make a fair playing field. Our belief is that is if the house is in Stark County it is fair that the seller from Fargo should come to Stark County to defend a claim on earnest money. There was an amend to the small claims law a few years ago with cities that were trying to collect utility bills. From the standpoint of consumers it will make it more equitable to them to recover the amounts and are generally small.

Senator Armstrong: What if the buyer and seller are in the same town?

Casey Chapman: We would agree that at that point in time what happens is that under the current law the claim could be brought in Cass County because this doesn't preclude. What this amendment says is that a claim may be brought.

Senator Armstrong: Without overly complicating things could you put 'unless both parties consent'?

Casey Chapman: From the standpoint of the NDAR if the parties consent to it we certainly not object to that.

Senator Armstrong: In all honesty that is a much rarer situation and would happen in commercial deals and not residential deals but I could see it come up.

Casey Chapman: It would be rare. When we look back at this proposal it would preclude that type of situation and would go with the most common situation but we would not object to such an amendment.

Chairman Hogue: If you get into a commercial dispute involving the earnest money it will apply to smaller transactions I am assuming.

Casey Chapman: We do agree with that. From my experience with commercial deals, usually the earnest money that is being put down is in excess of the \$15,000.

Senator Casper: Isn't this worse for the defendant?

Casey Chapman: I would agree in that sense and that is where we were trying to come to a more equitable situation.

Senator Casper: If the law is the way it is now they should go into it with the mindset that brining the claim and would potentially have to travel to bring the claim.

Casey Chapman: The viewpoint of the association is that in the same sense that the equity is balanced when you talk about leases on property and utilities there was a common ground that says if we end up in that situation there is the potential for inconvenience.

Nick Hacker: North Dakota Land Title Association. Many times we hold the earnest money, especially if it is private party. We are not allowed to interpret to the contract so unless there is a disagreement to close we will not release the funds.

Chairman Hogue: Can you tell us what an interpleader is.

Nick Hecker: It is when we sue both parties in court and we commence an action to deposit the funds and any evidence of the contract with the court and we are no longer involved once the action has been commenced.

There was no further testimony in support, opposition or neutral position on HB 1141 and Chairman Hogue closed the public hearing.

A motion was made by Senator Nelson to adopt the amendment with a second by Senator Casper.

Senator Armstrong: If one of the members and the property is in one district and the other is in another two beats one. If both the plaintiff and the defendant are in one jurisdiction and the property is in another, two still beats one.

Chairman Hogue: Why wouldn't you say unless all parties? What if there are multiple plaintiffs, defendants or interpleader party. Do they all have to consent?

Senator Armstrong: I would not put the interpleader into that equation and I do agree if there are multiple plaintiffs or defendants that may be an issue but I don't think the interpleader can interplead in small claims court.

Chairman Hogue: The statute uses defendant throughout so maybe it uses plaintiff and defendant so I think that it is ok.

Senator Armstrong: I think that the interpleaders have to interplead in district court.

There was no further discussion, a voice vote⁽²⁾ was taken and the motion passed. With the amended bill in front of them Senator Armstrong made a motion for a do pass as amended with a second by Senator Luick. There was no further discussion, roll was taken and the motion passed on a 5-1-0 vote with Senator Nelson carrying the bill to the floor.

15.0412.02001
Title.03000

Adopted by the Judiciary Committee

March 17, 2015

JD
3/17/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1141

Page 2, line 10, after "located" insert "unless the plaintiff and the defendant consent in writing to a proceeding in a different county"

Renumber accordingly

Date: 3/17/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1141

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: Armstrong Amendment (att 2)

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Nelson

Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote : Carried

Date: 3/17/15
 Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTE

BILL/RESOLUTION NO. 1141

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: 15.0412.02001 03000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	✓
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper		✓			
Sen. Luick	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Nelson

REPORT OF STANDING COMMITTEE

HB 1141: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1141 was placed on the Sixth order on the calendar.

Page 2, line 10, after "located" insert "unless the plaintiff and the defendant consent in writing to a proceeding in a different county"

Renumber accordingly

2015 TESTIMONY

HB 1141



North Dakota Association of REALTORS®

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#1
HB 1141
1-19-15
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Nancy Willis, *Gov't Affairs Director*
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TESTIMONY ON BEHALF OF HB 1141

Chairman Koppelman and members of the House Judiciary Committee. My name is Nancy R. Willis and I am the Government Affairs Director for the North Dakota Association of REALTORS® (NDAR).

NDAR represents more than 1600 REALTOR® and 250 affiliate members statewide.

On behalf of NDAR, I request a DO PASS on HB 1141. This is a bill that was introduced at our request after discussions with our legal counsel, Mr. Casey Chapman, Chapman and Chapman Law Firm.

He brought to our attention the inconvenience that exists when small claims courts believe that they do not have the authority to take cases where earnest money is in dispute in the venue where the property is located. This bill would make clear that this authority exists and be of benefit to those real estate clients who find themselves in this predicament.

I would like to thank Rep. Diane Larson for sponsoring this bill and will let Mr. Chapman describe the particulars of the bill and answer any questions you might have. Thank you.





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NB1141
1-19-15
pg 2

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HOUSE BILL 1141

HOUSE JUDICIARY COMMITTEE

Testimony

Casey Chapman

Legal Counsel

North Dakota Association of REALTORS®

Committee members, thank you for the opportunity to appear before you in support of House Bill 1141.

This bill proposes an amendment to the North Dakota law on Small Claims Court. Committee members may recall that the Small Claims Court allows a more informal, and usually speedier, access to the court system in those cases where the amount claimed does not exceed \$15,000.

Originally, the Small Claims Court was set up so that most claims would need to be made at the courthouse in the county of the defendant's residence. Over the years, certain amendments have been passed, recognizing that it is not always fair to require the plaintiff to travel to the defendant's county for a court date. For example, the law was amended in 1997 to allow a political subdivision to bring a claim for a public utility debt in the county where the political subdivision is located. Prior to that amendment, the political subdivision would have been required to travel to the county of the defendant's residence to commence the Small Claims Court action. Apparently, the Legislature thought it was fair to require the defendant to come back to defend in the county where the utilities were used and the debt was incurred.

Likewise, landlords have been allowed, for many years, to litigate Small Claims Court proceedings, arising from the defendant's lease of real property, in the county where the real property is located. A typical example of a landlord-tenant issue, which could end up in Small Claims Court, is a dispute over the security deposit and damage to the apartment. Again, the Legislature concluded that it was fair to make the defendant return for Small Claims Court to the county where the rental unit is located.

By this proposed amendment to House Bill 1141, that same rationale, applicable to property leases, would now apply to disputes over earnest money or other money deposits in real estate purchase agreements. Typically, when a person makes an offer to purchase a house, earnest money is placed in escrow with the real estate broker. Purchase agreements often contain provisions which allow the buyer, in certain circumstances, to legally back out of the deal and to claim a return of earnest money. Unfortunately, the seller and the buyer sometimes disagree whether those certain circumstances, which allow a return of earnest money, actually exist.

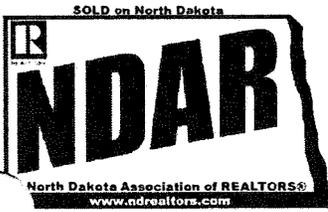
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Because there are court cases, where real estate brokers have been held liable for returning earnest money to the wrong party, real estate brokers are routinely advised that, unless the seller and buyer agree on release of the earnest money, no money should be released unless a judge decides the issue. Under the current Small Claims Court law, the location of the house, which was the subject of the purchase agreement, is irrelevant, because the Small Claims Court action must be commenced in the county where the defendant resides.

In our modern society, that situation can create an unfair burden on one of the parties to the agreement. Many individuals own property in counties which are not their county of residence. Likewise, buyers often make offers to purchase property in counties where they don't reside. In each of those circumstances, the aggrieved party might need to travel to some other part of the state in order to bring a claim in Small Claims Court. Under the current law, if a Grand Forks resident enters into a purchase agreement to sell her/his property in Dickinson to a Dickinson resident, and if the Grand Forks seller later refuses to authorize release of the earnest money when the agreement is terminated, the Dickinson resident will need to travel to Grand Forks to fight in Small Claims Court to gain a refund of the earnest money.

House Bill 1141 attempts to offer a solution. Under this amendment, either party would have the right to bring the Small Claims Court case in the county where the real property is located. That simply seems fair. One party owned the land in that county, and the other party was willing to travel to that county to inspect the land and to make an offer to purchase. Thus, it is a minimal burden to make them use that same county as the location for the Small Claims Court case.

I support passage of House Bill 1141.



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3-17-15

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TESTIMONY ON BEHALF OF HB 1141

Chairman Hogue and members of the Senate Judiciary Committee.

My name is Nancy R. Willis and I am the Government Affairs Director for the North Dakota Association of REALTORS® (NDAR).

NDAR represents more than 1600 REALTOR® and 250 affiliate members statewide.

On behalf of NDAR, I request a DO PASS on HB 1141. This is a bill that was introduced at our request after discussion with our legal counsel, Mr. Casey Chapman, Chapman and Chapman Law Firm.

He brought to our attention the inconvenience that exists when small claims courts believe that they do not have the authority to take cases where earnest money is in dispute in the venue where the property is located. This bill would make clear that this authority exists and be of benefit to those real estate clients who find themselves in this predicament.

We would like to publicly thank Rep. Larson for introducing this bill and Reps. Beadle, Boschee, Hanson and Louser for being co-sponsors. I am happy to answer any questions, but would like to defer to Mr. Chapman to describe the particulars of the bill, which may serve to answer questions you might have. Thank you.



3/17/15
#21

**PROPOSED AMENDMENTS TO HB 1141
(Sen. Armstrong)**

1 A BILL for an Act to amend and reenact section 27-08.1-01 of the North Dakota Century
2 Code, relating to inclusion of a dispute over disposition of earnest money or other money
3 deposit arising from a contract to purchase real property within the jurisdiction and venue
4 of small claims court proceedings.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 27-08.1-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 **27-08.1-01. Small claims court - Jurisdictional limits - Venue.**

- 9 1. All judges of the district courts may exercise the jurisdiction conferred by
10 this chapter, and while sitting in the exercise of that jurisdiction must be
11 known and referred to as the "small claims court". The jurisdiction of this
12 court is confined to cases for recovery of money, or the cancellation of
13 any agreement involving material fraud, deception, misrepresentation, or
14 false promise, when the value of the agreement or the amount claimed by
15 the plaintiff or the defendant does not exceed fifteen thousand dollars.
- 16 2. The proceedings in this court must be commenced:
 - 17 a. If the defendant is a corporation, limited liability company, or a
18 partnership, in any county in which the defendant has a place of
19 business or in any county in which the subject matter of the claim
20 occurred.
 - 21 b. If the claim is for collection of a check written without sufficient
22 funds or without an account, in the county where the check was
23 passed, or in the county of the defendant's residence or place of
24 business.
 - 25 c. If the defendant is an individual and the claim is for collection of an
26 open account on which credit has been extended:
 - 27 (1) In the county of the defendant's residence or place of
28 business; or
 - 29 (2) If the amount of the claim is less than one thousand dollars
30 and is not from a telephone or mail order transaction, in the
31 county where the transaction occurred or in the county of
32 the defendant's residence or place of business.
 - 33 d. If the defendant is an individual and the claim is not made under
34 subdivision b or c, in the county of the defendant's residence.
 - 35 e. If the defendant is an individual and the claim arose as the result
36 of the defendant's lease of real property or as the result of a
37 dispute over disposition of earnest money or other money deposit
38 arising from a contract to purchase real property, in the county
39 ~~where the defendant resides or in the county where the real~~
40 ~~property is located~~ unless both the plaintiff and defendant consent
41 in writing to a different jurisdiction.
 - 42 f. If the plaintiff is a political subdivision and the claim is for a public
43 utility debt, in the county in which the political subdivision is
44 located.
- 45 3. Except for an action under subdivision c, e, or f of subsection 2, the
46 defendant may elect to remove the action to a small claims court in the

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defendant's county of residence. A claim may not be filed by an assignee of that claim. A garnishment or attachment may not issue from this court until after judgment is entered.

HB 1141
3/17/15