

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1367

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1367

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-99

Tape Number	Side A	Side B	Meter #
2	x		36.2
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1367 Relating to discharge of satisfied mortgage.

Chairman Berg opened the hearing on the bill.

Mr. Jim Horner, ND Land and Title Association, testified in opposition to the bill. He said it is a great idea but it can not be enforced.

Ms. Marilyn Foss, ND Bankers Association, testified in opposition to the bill. They are suggesting a standard of 60 day notice.

(see attached written testimony)

Mr. Jack McDonald, Independent Community Banks of ND, testified in opposition to the bill.

He suggested adopting the amendments which puts it at 60 days in lieu of 10 days.

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House Industry, Business and Labor Committee

Bill/Resolution Number Hb 1367

Hearing Date 1-26-99

Mr. Tim Horner suggested sending the satisfaction to the courthouse. The problem arises when its not at the courthouse.

Chairman Berg closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1367 1-27-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
2		x	2691 - 4190
Committee Clerk Signature <i>Risa Horner</i>			

Minutes: **HB 1367**

Chairman Berg opened the discussion of HB 1367.

Amendments were handed out and committee discussed.

Rep. Keiser wanted to know about the 60 day notice period.

Chairman Berg This says which is ever shorter.

Rep. Keiser: I think this will create a liability to the bank.

Chairman Berg I don't think there has ever been a problem with any local banks. 60 days would be the maximum for this.

Rep. Koppang made the motion to adopt the amendments.

Rep. Severson second the motion.

The voice vote was 15 yea, 0 nay. The motion carries.

Rep. Koppang made a motion for a Do Pass as Amended.

Rep. Severson second the motion.

The roll call vote was 15 yea, 0 nay.

The motion carries.

Rep. Koppang will carry the bill.

PROPOSED AMENDMENTS TO HB 1367

Page 1, line 7, replace "ten" with "sixty"

Page 1, line 8, after the comma, insert "or within thirty days of a written"

Page 1, line 8 remove the overstrike over "~~demand of the owner of the property~~",
and insert "whichever is shorter."

Renumber accordingly

Date: 1-27-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1367

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Koppang Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe	/	
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Koppang

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

REPORT OF STANDING COMMITTEE

HB 1367: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1367 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "ten" with "sixty"

Page 1, line 8, overstrike the comma, after "~~upon~~" insert "or within thirty days of receipt of a written", and remove the overstrike over "~~demand of the owner of the property,~~" and insert immediately thereafter "whichever is shorter,"

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1367

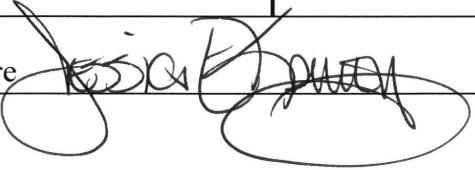
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1367

Senate Political Subdivisions Committee

Conference Committee

Hearing Date MARCH 8, 1999

Tape Number	Side A	Side B	Meter #
1		X	1300 to 2690
Committee Clerk Signature 			

Minutes:

SENATOR MUTCH: open the hearing on HOUSE BILL 1367

REPRESENTATIVE SVEJAN: testimony included, support HOUSE BILL 1367, requires the discharge or lean of any lease to require a certificate of discharge when the lean is satisfied.

Shifts the responsibility from the property owner to the mortgage owner to insure a satisfaction of mortgage has been recorded with the register of deeds. (see letter from John Nords). Cost of mortgage and carried over insurance coverage for one month.

SENATOR SAND: letter satisfaction and date of this satisfaction occurred with the bank.

REPRESENTATIVE SVEDJAN: must have been some delay with the registrar of deeds

SENATOR SAND: mortgage was recorded after the deed was satisfied

SENATOR KREBSBACH: look at the date and it says 1988.

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Senate Political Subdivisions Committee

Bill/Resolution Number Hb1367

Hearing Date MARCH 8, 1999

SENATOR SAND: came up two years ago, recording fees and fees for not recording. How do we make out of state companies comply with this law and pay the court house fees and other fees associated with filing a mortgage

REPRESENTATIVE SVEDJAN: has to be a way to monitor this but I can't answer that question
This company would be subject to the same regulations as any other company within the state, and failure to pay those fees would result in a penalty.

SENATOR KREBSBACH: answer to question above. when you get \$50,000.00 unsecured, there is no lean filed. This is a mortgage filing

SENATOR MUTCH: mortgage is different than a filing

SENATOR KREBSBACH: yes.

SENATOR MUTCH: anyone else

MARILYNN FOSS: support of this bill, see testimony

SENATOR MUTCH: what's the testimony if the demands are not met.

MARILYNN FOSS: under current law there is a provision for actual damages that the filer has suffered plus 100 dollars in subsequent damages.

JACK COVAL: written testimony, support recommended changes

KLAUS LEMKE: support this bill

SENATOR MUTCH: any further questions

SENATOR HEITKAMP interested in knowing whether the mortgagor is liable to the owner plus damages. damages from the previous letter

SENATOR SAND: it wasn't the law

Page 3
Senate Political Subdivisions Committee
Bill/Resolution Number Hb1367
Hearing Date MARCH 8, 1999

MARILYNN FOSS: don't know if they were paid for the damages. With older laws it may
have been the practice

DISCUSSION

MOTION: close the hearing

SENATOR SAND: DO PASS

SENATOR KREBSBACH: SECOND THE MOTION:

SENATOR KREBSBACH: amendments for this bill

Date: 03/08
 Roll Call Vote #: 1
 SR414232

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 HOUSE BILL/RESOLUTION NO. 1367

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By SAVO Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment SAVO

REPORT OF STANDING COMMITTEE (410)
March 8, 1999 1:36 p.m.

Module No: SR-41-4232
Carrier: Sand
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1367, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1367 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1367

TESTIMONY OF MARILYN FOSS
On Behalf of the North Dakota Bankers Association
HB 1367

Chairman Berg, members of the House Industry, Business and Labor Committee I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am appearing here today to offer amendments to HB 1367 because our member banks are concerned about the availability of mortgage credit in North Dakota. Today, most banks have made arrangements to sell their home mortgage loans on the secondary market. The availability of the secondary market is enormously beneficial because it gives our lending institutions the ability to liquidate their investments in mortgage loans by selling them and then, to turn around and to re-lend and make more mortgage loans with the proceeds from the mortgage loans that have been sold on the secondary market. The "multiplier effect" which is created means vastly more mortgage loans are made in North Dakota than would happen without free access to the secondary market.

But, there is a downside, which we can not deny. There can be servicing hassles and what seem to be inordinate delays in the process of recording a mortgage satisfaction. Our bankers acknowledge this, but they tell us that the delays don't ordinarily impede mortgage financing or refinancing transactions because they have adjusted their lending practices to recognize the realities of the secondary market and its operations. Our bankers also tell us that they are concerned that HB 1367 may reduce their access to the secondary market because they're not sure the secondary market can adjust practices to comply with the requirements of the bill.

We are proposing amendments to the bill in the spirit of compromise because we recognize there can be isolated problems, even though there are thousands and thousands of mortgage transactions which close smoothly. These amendments extend the 10 day period which is proposed in the bill. The period is extended to 30 days from the date of an owner's written demand or to 60 days from the date of the satisfaction, whichever is shorter. This is similar to the way terminations of financing statements are handled, although the time limits are longer.

If the amendments are adopted and the bill is enacted into law, section 35-01-27 would then state:

35-01-27. Discharge of mortgage or lien on real property - Penalty. Within 60 days after any mortgage or other lien upon real property is satisfied, or within thirty days of a written demand of the owner of the property, whichever is shorter, the owners of the mortgage or other lien shall execute a certificate of discharge duly acknowledged, and cause a satisfaction of record to be entered. The fee for filing the satisfaction must be paid by the owner of the property or added to the debt paid by the owner of the property. Any mortgagee or owner of a mortgage or lien who fails to execute or deliver a discharge or to enter a satisfaction as provided under this section is liable to the owner of the property for all damages sustained

as a result of the refusal and exemplary damages of one hundred dollars.



Representative Ken Svedjan
District 17
3010 Central Court, Times Square
Grand Forks, ND 58201-3502

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Appropriations

TESTIMONY FOR HB 1367

Prepared by Representative Ken Svedjan

Tuesday, January 26, 1999

Chairman Berg and Members of the IBL Committee. My name is Ken Svedjan, State Representative from District 17, Grand Forks, North Dakota. I introduced HB 1367 for a constituent in Grand Forks, and am here today to speak in favor of its passage.

HB 1367 is quite straightforward. It requires the owners of a mortgage or other lien, within ten days after any mortgage or lien upon real property has been satisfied, to execute a certificate of discharge, and cause a satisfaction of mortgage to be entered with the appropriate Register of Deeds. The filing fee must be paid by the owner of the real property. Failure, on the part of the mortgage owner, to properly record said satisfaction of mortgage with the County Register of Deeds makes the mortgage owner liable to the property owner for all damages sustained by the property owner as a result of said failure, as well as exemplary damages of \$100.

Mr. Chairman, current law states, "When any mortgage or other lien upon real property has been satisfied, immediately upon demand of the owner of the property, the owners of the mortgage or other lien shall execute a certificate of discharge duly acknowledged, and cause a satisfaction of record to be entered." HB 1367 shifts the responsibility from the property owner to the mortgage owner to ensure that a satisfaction of mortgage has been expeditiously recorded with the Register of Deeds. Mr. Chairman, with your permission, I would like to read into the record a communication from my local constituent.

I urge a DO PASS recommendation on HB 1367.

Respectfully submitted by:

Representative Ken Svedjan, District 17, Grand Forks, North Dakota

1-22-98

Representative Ken Svedjan
Bismarck, ND. 58501

RE: Passage of HB 1367

Dear Mr. Chairman and Members of the Committee:

The purpose of this letter is to speak in favor of the passage of the bill HB 1367.

My wife and I were owners of a flooded house that was bought out by the city of Grand Forks. It was a house that had sustained more than 50% damage and was in the 100 year flood plain. We were temporarily forced to use all our savings and go buy another house while the city was working through the buy out program. When we did get our buy out date and did appear at the City's Attorney's Office in City Hall, we were informed that we could not get our \$131,473.54 due us, "since there appeared to be two mortgages on the property which had not been satisfied." My wife and I were upset because we knew the balances were zero and we also knew that we had not paid any mortgage payments on this property for about 6 years.

To make a long story short, we received our moneys 28 days later, since we were paying interest on other mortgages, this hold up cost us money. I wrote the bank for reimbursement and they respectfully declined. (copy enclosed) I feel that this time lag cost us approximately \$925.00 in mortgage interest paid and house insurance that had to be carried for 1 more month.

Please consider passage of the above bill for the above reason.

Sincerely,



John & Angie Nord

PS. It should also be entered that we did not receive a satisfaction of mortgage from the banks when our loan was paid off.

LETNES, MARSHALL & SWANSON, LTD.

Attorneys at Law

P.O. Box 12909

Grand Forks, ND 58208-2909

Telephone: (701) 772-3407 • FAX (701) 772-8959

Daniel S. Letnes

John Marshall

•Howard D. Swanson

John A. Warcup

•Paul C. Germolous

•Also Licensed in Minnesota

February 6, 1998

Dr. and Mrs. John O. Nord
3650 21st Avenue South
Grand Forks, ND 58201

RE: Closing

Dear Dr. and Mrs. Nord:

Enclosed please find a photocopy of the Closing Statement regarding the City's purchase of your property at 3104 East Elmwood Drive, Grand Forks. Please note the Closing Statement shows the amount the City will pay for the purchase of this property. Also enclosed for your information and review is a copy of a Release, Covenant Not to Sue, and Request for Exclusion from Class. This is one of the documents that we will be requesting that you sign at the time of closing.

As you are aware, your closing is scheduled for Friday, February 6, 1998 at 1:00 p. m. in the City Attorney's office which is located in Room A-207 on second floor of City Hall. We ask that you please bring to the closing the keys to this property. If you have received a property tax statement from Grand Forks County relative to this property, kindly bring the statement to the closing as well.

At this time, there appear two mortgages on the property which have not been satisfied of record as follows:

- 1. → Mortgage in favor of Metropolitan Federal Bank, fsb securing the sum of \$58,650.00 dated January 17, 1986 and recorded February 11, 1986 at 2:00 p.m. as Document No. 419146 Register of Deeds, Grand Forks County, North Dakota as assigned to Knutson Mortgage Corporation dated April 30, 1990 and recorded May 10, 1990 at 11:00 a.m. as Document No. 455997.
- 2. Mortgage in favor of Metropolitan Federal Bank, fsb securing the sum of \$65,000.00 dated March 9, 1988 and recorded March 14, 1988 at 3:30 p.m. as Document No. 437965.

Pd off 1991
SATISFIED
Feb. 1998

↖ PAID OFF MARCH 12, 1991
↖ SATISFIED FEB 13, 1998



First Bank Grand Forks

Member First Bank System

P.O. Box 13318
Grand Forks, ND 58208-3318

February 23, 1998

John Nord
2650 32nd Avenue South
Grand Forks, ND 58201

Dear John:

Today I received your Certified Letter asking First Bank to reimburse you and your wife for the carrying costs of your mortgages. This letter is to inform you that we respectfully deny your request.

We have done everything in our power to see that your issue has been resolved. On February 13th your mortgage satisfaction was finalized and we called John Warcup from the Marshall Swanson law firm to inform him of our progress. At that time, John indicated that he had all of the satisfactions he needed.

I called John Warcup this morning and found that he was no longer waiting for the bank to do anything. He had been trying to get a hold of you to schedule a closing. I suggest that if you have not already set a closing date, that you call John Warcup to do so.

If you have any questions about this letter, please feel free to contact me at 795-6175.

Sincerely,

John O. Snustad
President/
Business Banking Manager

LETNES, MARSHALL & SWANSON, LTD.

Attorneys at Law

S. Letnes
 F. John Marshall
 •Howard D. Swanson
 John A. Warcup
 •Paul C. Gernolous
 •Also Licensed in Minnesota

P.O. Box 12909
 Grand Forks, ND 58208-2909
 Telephone: (701) 772-3407 • FAX (701) 772-8959

March 2, 1998

Dr. and Mrs. John O. Nord
 3650 21st Avenue South
 Grand Forks, ND 58201

RE: Closing

Dear Dr. and Mrs. Nord:

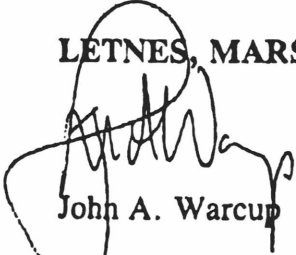
Enclosed please find a photocopy of the revised Closing Statement regarding the City's purchase of your property at 3104 East Elmwood Drive, Grand Forks. Please note the Closing Statement shows the amount the City will pay for the purchase of this property.

As you are aware, your closing is scheduled for Friday, March 6, 1998 at 9:30 a. m. in the City Attorney's office which is located in Room A-207 on second floor of City Hall. We ask that you please bring to the closing the keys to this property.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me. We look forward to meeting you.

Sincerely,

LETNES, MARSHALL & SWANSON, LTD.


 John A. Warcup
 JAW/

Enc.

NOTE: Original closing
 DATE FEB 6 WAS
 MOVED to
 MARCH 6, 1998!!

March 8, 1999

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1367

CHAIRMAN MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of The Independent Community Banks of North Dakota. We support **HB 1367** and urge that you give it a DO PASS.

At times there are problems getting mortgage satisfactions filed since the mortgages are sold on the secondary market and end up with companies in Florida, California, Georgia or any number of other locations.

However, to unduly restrict this market would simply cause it to go elsewhere, and North Dakotans would suffer for lack of available mortgage financing.

This bill is a good solution to the problem. It puts in some deadlines, but they are not so restrictive so as to cause the market to dry up. This is a good bill for both consumers and their lenders.

We respectfully request your **FAVORABLE CONSIDERATION** of this bill. If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

TESTIMONY OF MARILYN FOSS
On Behalf of the North Dakota Bankers Association
Engrossed HB 1367

Chairman Mutch, members of the Senate Industry, Business and Labor Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you on its behalf.

NDBA sponsored amendments to this bill when it was considered by the House IBL Committee. The amendments increased the statutory time period for filing a satisfaction of a paid mortgage from 10 days to 60 days from the date of the satisfaction or 30 days from the receipt of a written demand by an owner, whichever is less. The House adopted our proposed amendments.

NDBA took a position of HB 1367 because of our members concern about the effect of the original bill on the continued availability of mortgage credit in North Dakota. Today, most banks have made arrangements to sell their home mortgage loans on the secondary market. The availability of this market is enormously beneficial because it gives lenders the ability to liquidate their investments in mortgage loans and to turn the proceeds around by re-lending them for more mortgage loans. This "multiplier effect" means vastly more mortgage money is available in North Dakota than would be the case if our lenders did not have easy access to the secondary market.

Even so, we recognize there can be a downside to the process. There can be servicing hassles and what seem to be inordinate delays in the process of recording a mortgage satisfaction. Our members acknowledge this, but tell us that the delays don't ordinarily impede re-financing transactions because the mortgage lenders have adjusted their practices to accommodate the realities of the secondary market. Our concern was that the secondary market wouldn't accommodate HB 1367 in its original form.

As the bill now stands, a mortgagee will have at least 30 days in which to satisfy a paid mortgage and record the satisfaction. This period of time may extend to 60 days if the owner of the property hasn't made a written demand for an earlier satisfaction. This "two-tiered" method of handling the situation is similar to the way terminations of financing statements are handled, although the time limits in this bill are longer.

We urge you to support this engrossed bill..