

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1257

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La Costa Rickford  
Operator's Signature

10/2/03  
Date

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2003 HOUSE JUDICIARY  
HB 1257

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1257

House Judiciary Committee

Conference Committee

Hearing Date 2-3-03

Tape Number	Side A	Side B	Meter #
1		x	37-end
Committee Clerk Signature <i>Almond</i>			

**Minutes:** 12 members present, 1 member absent (Rep. Bernstein)

**Chairman DeKrey:** We will open the hearing on HB 1257.

**Rep. Klemin:** Introduced and explained the bill (see attached amendments and testimony).

**Vice Chair Maragos:** Thank you.

**Rep. Delmore:** Who's responsibility is it to let the lender know.

**Rep. Klemin:** You don't have to let the lender know, you have to record the notice.

**Rep. Delmore:** I would do that where?

**Rep. Klemin:** You would do it with County Recorder. You would record to protect your interest.

**Rep. Delmore:** Would someone direct me to do that? Would somebody make sure that I was educated enough to go through and say my son has the first mortgage, and I am doing the second mortgage, but would like to know if there is a problem with my son's.

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House Judiciary Committee  
Bill/Resolution Number HB 1257  
Hearing Date 2-3-03

**Rep. Klemm:** If I was handling the legal part for that person, we would check with the recorder's office.

**Rep. Delmore:** As far as the penalty of this goes, if then my son's property is foreclosed on, and I have the second mortgage, and the lender doesn't let me know, the only thing I am ever going to be entitled is \$500. Not anything as far as the other investment I have.

**Rep. Klemm:** You would also be the holder of the second mortgage, and could redeem the property under the mortgage foreclosure law. You could come in and pay off the whole amount that is due. We don't want to get into that stage of things, we want to keep it at the stage where the person is still paying installments.

**Rep. Onstad:** If we use contract for deed, you record that contract for deed and an unrecorded contract for deed. Now the recorded contract of deed, that's recorded.

**Rep. Klemm:** There is no requirement for the lender to give notice to an owner of the contract for deed that there is a problem.

**Rep. Onstad:** What is the difference.

**Rep. Klemm:** The difference is that a recorded contract for deed, he's not going to know that foreclosure is imminent. He is going to get served with the Summons and Complaint when the foreclosure action is actually started. The person with the unrecorded contract for deed isn't going to know at all.

**Rep. Onstad:** You can continue to have an unrecorded contract for deed?

**Rep. Klemm:** Yes.

**Rep. Wrangham:** This third person who files notice that he wants to be informed if there is a foreclosure, if in fact, there is a foreclosure, he is to receive notice; however, that notice does not

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House Judiciary Committee  
Bill/Resolution Number HB 1257  
Hearing Date 2-3-03

have to be sent by certified or registered mail. What would be the defense of the foreclosing entity, they say I sent notice, and they say I didn't get it.

**Rep. Klemin:** The bill requires the notice be sent, it doesn't require that he receives it. All they have to do is prove that they sent it, by affidavit of service of mailing. This is not unusual.

**Rep. Delmore:** Why do you not want the person to be notified the same way as other notices.

**Rep. Klemin:** It was the choice made in this bill, the person who puts in the request, has to give his mailing address and if you mail it to that address, that should be all right. That's really all that is required.

**Vice Chair Maragos:** Thank you. Any further testimony in support or opposition?

**Jim Schlosser, ND Bankers Association:** Opposed (see attached testimony).

**Rep. Delmore:** How many cases are there, say for lending institutions, what is a reasonable number of payments missed for a foreclosure action?

**Mr. Schlosser:** It varies from institution to institution. Average of 3-4 missed payments.

**Rep. Delmore:** How many in a month for a lending institution.

**Mr. Schlosser:** In the 1980's we had quite a few, but right now, there are not many. It happens on commercial properties more than on private properties. Need a law for good and bad times.

**Rep. Delmore:** In the last paragraph on page 1, what makes you assume I would know.

**Mr. Schlosser:** If you are entering into a contract of deed you would want to have the records checked to see if there are any outstanding property taxes, etc.

**Vice Chair Maragos:** Thank you. Any further testimony. We will close the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1257

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2		xx	38.7-end
3	xx		0-8.4
Committee Clerk Signature <i>Alenose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1257.

**Rep. Klemin:** I move both sets of amendments.

**Rep. Maragos:** Seconded.

**Voice vote:** Carried.

**Rep. Grande:** I move a Do Pass as amended.

**Rep. Kingsbury:** Seconded.

**12 YES 1 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Kretschmar**

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*LaCosta Rickford*  
Operator's Signature

*10/3/03*  
Date

# 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to requests for notice of intention to foreclose.

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

**SECTION 1.** A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

**Request for notice of intention to foreclose.**

1. A person, other than the <sup>legal</sup>owner of record, may record in the office of the recorder of the county in which the real estate is located a request for service of a notice of intention to foreclose a real estate mortgage or contract for deed. The request for notice must be recorded as a separate and distinct document. The request must state:
  - a. The recording data for the mortgage or contract for deed on which a notice of intention to foreclose is requested;
  - b. The names of the parties to the mortgage or contract for deed on which a notice of intention to foreclose is requested;
  - c. The name and address of the person requesting service of a notice of intention to foreclose; and
  - d. A legally sufficient description of the real property collateral affected by the real estate mortgage or contract for deed.
2. A person that records a request under subsection 1 before the date on which a notice before foreclosure required by section 32-19-20 is served is entitled to be served with a notice of intention to foreclose. The person must be served by first-class mail addressed to the person at the address shown on the recorded request. Recording a request does not affect the title to the real property collateral and does not impute knowledge to any person of an interest in the real property collateral held or claimed by the person requesting service of a notice of intention to foreclose. A person that records a request for service of a notice of intention to foreclose under this section may subsequently record an amendment withdrawing the request or supplementing or correcting the person's name, address, or other information in the request.
3. The notice of intention to foreclose required by this section must contain:
  - a. A description of the real estate;
  - b. The date of the mortgage or contract for deed;
  - c. The name and address of the recordholder of the mortgage or contract for deed; and

- d. A statement that one or more defaults exist under the mortgage or contract for deed and that if the defaults are not cured within the time permitted by law, proceedings may be commenced to foreclose the mortgage or contract for deed.
4. If foreclosure of a mortgage or contract for deed on real estate is completed and a person that had timely recorded a proper request for service of a notice of intention to foreclose under subsection 1 was not served with a notice of intention to foreclose, the person is entitled to recover five hundred dollars from the foreclosing creditor. No other remedy or sanction may be imposed against the foreclosing creditor on behalf of the person for failure to serve a notice of intention to foreclose. Failure to serve the notice does not constitute a defense to the foreclosure or invalidate the foreclosure in any way."

Renumber accordingly



