

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1312

2005 HOUSE AGRICULTURE

HB 1312

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1312

House Agriculture Committee

Conference Committee

Hearing Date 1---21---05

Tape Number	Side A	Side B	Meter #
ONE	A		33.4 TO END
TWO	A		00 TO 18.8

Committee Clerk Signature



Minutes:

VICE CHAIRWOMAN KINGSBURY: Committee Members, we will open on HB 1312.

HB1312 IS RELATING TO DEFICIENCY JUDGMENTS ON AGRICULTURAL REAL PROPERTY. HB 1312 AND HB 1315 ARE RELATED BILLS.

VICE CHAIR: Who would like to start with testimony in favor of HB 1312?

STEVE TOMACK: Executive Director, NDFCC [[please see and read printed testimony of Steve Tomack. Starts with, Madam Chair and members of the House Agriculture Committee, HB 1312 changes the way we approach deficiency judgments on agricultural properties and HB 1315 makes changes to the redemption period on agricultural properties. On behalf of the four Farm Credit associations in North Dakota, let me say that this is an appropriate TIME to debate these issues. It is a time that we are not presently challenged by high delinquency rates and we can approach these issues reasonably and without high emotion. The four Farm Credit

associations in ND have a combined customer base of about 18,000 farmers who borrow some \$2.3 billion. Towards the end of the printed testimony, Steve Tomac read the change in 1951 applied to both commercial property and agricultural property. The 1993 Legislature revised the deficiency judgment statutes for commercial property but left the process for agricultural properties the same as they have been since 1951. HB 1312 makes the deficiency judgment process for agricultural properties the same as commercial properties. The key difference between commercial and agricultural properties are as follows. ---please see printed testimony] --towards the end of testimony Steve Tomack stated Madam Chair and members of the Committee, we recognize that there is a great deal of apprehension in modifying this statute. To address those concerns, I am happy to report that we are very close to agreeing on amendments with Farmers Union. However we haven't had time to finish drafting those amendments. Those amendments include eliminated the jury trial and requiring the judge to base the deficiency judgment on a fair market value. I would respectfully ask the committee to withhold action until the amendments are presented to the committee.

STEVE TOMAC: Absent, this type of legislation because it has been moving very rapidly it is a very strong market that we are into. I share that concern but I would look at it just a little bit differently. Rather than factor in the strengthening the land market which is very strong the way it is. I am not sure how you would make it any stronger. I think this gives an opportunity to some young people or old people. People interested in buying that quarter or half section next door and being able to compete with the out of state, the other forces that are within the market. A personal note if you will indulge me, there is a half section that is coming up for sale near me in St Anthony. Frankly, I am not going to be able to come up with 35 percent. Maybe I can do 15,

to 25 but not 35%. I think that story is pretty typical for a lot of people. Many farmers around the state. How can we as a farm cooperative. Advance that opportunity to our borrowers, how can they even compete with the out of state or the recreational interests that are going to come and pay at least 50% down if not cash for the whole transaction. Those decisions have to be made on a case by case basis. Obviously the loan to asset ratio is not the the only quietare By which Farm Credit loans money Cash flow, etc there are a lot of factors that come into the decisions. It is one that we consider. These two bill do tie up just a little bit and adjust a little to the regulations were governed by. There is a little more flexible.

MADAM CHAIR WOMAN: Is there additional testimony in favor of HB 1312?

DENNIS LAUMB: Chairman of the North Dakota Farm Credit Council. Dennis is from the Valley City area. I am here to support HB 1312. Also offer testimony which is attached. {{please read}}. Borrowers have a obligation to pay the dollar amount when the loan obligation was established. When those obligations are not met, and his or her asset sheet is strong enough to cover the balance sheet. That is when we need the deficiency judgment. The present law slows financial institutions from pressing because it is extremely. The cost to the financial institution cannot be passed off to the borrower and must be paid by the lending institution. Or the lender may not peruse the judgment and ignore the law. In either case the lender must absorb the cost which is not fair. From the farmers point of view. I think the present day farmers are business people. They understand the risks and potential losses. Involved in financing farm real estate. Those who take financial risks also have financial awards.

Most farmers want to do the morally right thing. It is those few who are not willing to pay back their obligations even though they are able to do so. They don't have the same thoughts as their neighbor. The change in the present law that allows lending institutions to borrow into the opportunity will not be held hostage by the borrower who wants to leverage one side of the balance sheet only. I see and recognize the needs to change this law. Thank you Madam Chairwoman for allowing me to come here and let me testify.

MADAM CHAIRWOMAN KINGSBURY: Any questions of Mr Laumb? Thank you for your testimony.

KEN ABLERS: I am a farmer in business with two sons in Oliver County. Near Center. I am also a director for the Farm Credit Association in Mandan.. I am here to speak in favor of HB 1312. If a lender does not have the opportunity to recover all of the money he has put into a loan on a facility. Meaning raising hogs and other facilities like that. If a borrower has in another place, as a farmer I feel that the lender should be able to go after it. Farmer are business men they know their responsibilities. In the 1980's, we had to deal with difficult financial situations at that time. We saw instances where lenders did not have resources to pay off the balances. We wrote those off. We had no problem with that. But we ran into people who had other resources who could have paid but would not. That bothered me. The other members of the association had to stand the losses. I support this bill. HB 1312.

MADAM CHAIRWOMAN KINGSBURY: Other testimony.

MICHAEL KEEF: I AM PRESIDENT OF NORTH DAKOTA FARM SERVICES OF MANDAN. I stand before you and am in support of HB 1312. I support the discussions. For the amendments. My perspective is as a president of a lending institution. As a lender

I want to create success for my lenders. Also opportunities for the lenders. House Bill 1312 and the amendments provide those opportunities to assess the lending the traditional standards because it provides access to the balance sheets through deficiency judgments for those who can afford to pay but don't. As a financial officer I have a stated of the capitol of the cooperative and HB 1312 and amendments provide me with the tools to hold those responsible have financial resources beyond just the agriculture real-estate debt. The bill is good for the long term agriculture community. Makes good modifications.

REP. MUELLER: You are making a great case. Lets use the example a person who incurred the obligation. Did not get the job done. You had to do what you had to do. His or her, for example they have a house in town that they can finally go off to. A car or pickup.. How would this effect them? Those type of assets what affect.

MICHAEL: Not being an attorney. I don't know. Home stead privileges etc. I see this bill effecting other assets. Maybe other business's. Beyond the home personal effects. Etc. In the 1980's we wrote off debts as to people owning a home etc. That is not where the issue is. People

REP. MUELLER: This change in the law effects all lending institutions.

MICHAEL: Yes.

The Lisa is not a home. It is stocks and bonds other assets that we want to be able to get to.

CHAIRWOMAN WOODBURY:

WOODY BARTH: We have been working with Mr Tomack on the changes and I think we are in agreement on about 90 percent of the bill. We have no trouble going from a jury trial

We believe a judge can make a judgment as to deficiency payments have been with Agriculture lending all of my life . Ninety five percent of have no other assets. We hope people will be able to keep there home etc. Steve talks about loaning up to 80% and that is fine if you have the assets to do it Cash flow. I think we would be in favor of the HOG HOUSE AMENDMENTS.

MELCOM BROWN: Attorney for Bar Association: Neutral position. I was not aware of the HOG HOUSE AMENDMENTS. THIS WILL ADDRESS SOME OF THE CONCERN OF THE TECHNICAL CONCERNS THAT THE BAR ASSOCIATION HAD. I am sure we will work with Mr. Tomack.

MADAM CHAIRWOMAN KINGSBURY: Any more testimony on HB 1312 EITHER FOR OR AGAINST.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1312

House Agriculture Committee

Conference Committee

Hearing Date 2---10---05

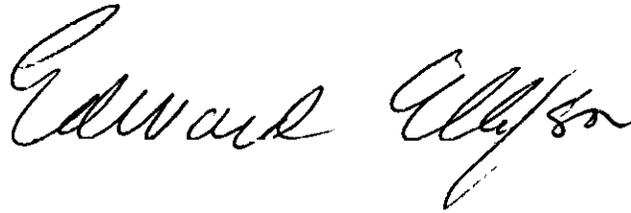
Tape Number
TWO

Side A
A

Side B

Meter #
4.3 TO 4.6

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: We have before us HB 1312. The amendment was talked about momentarily. The chair asked for any discussion.

CHAIRMAN NICHOLAS: I will entertain a motion on HB 1312.

REPRESENTATIVE BRANDENBURG: I WILL MAKE A MOTION FOR A DO PASS AS AMENDED.

REPRESENTATIVE KREIDT: SECONDED THE MOTION AS AMENDED.

THE AMENDMENT WAS ADOPTED.

CHAIRMEN NICHOLAS ASKED FOR A MOTION.

REPRESENTATIVE BANDENBURG MADE A MOTION FOR DO PASS

REPRESENTATIVE KREIDT SECONDED THE MOTION.

THE ROLL WAS TAKEN: THERE WERE 11 YES 2 NO 0 ABSENT

REPRESENTATIVE CARRIED THE BILL. THE CHAIR CLOSED ON HB 1312

House Amendments to HB 1312 - Agriculture Committee 02/11/2005

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 deficiency judgments on agricultural land; and to amend and reenact section 32-19-06 of the North Dakota Century Code, relating to foreclosures of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court ~~may~~ shall render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action, and ~~may~~ shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises be delivered until after the expiration of the ~~one-year~~ redemption period unless otherwise ~~allowed~~ ordered by the court pursuant to section 32-19-19. The court shall direct, and the judgment must provide, that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagor or vendor or the

successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 2. A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the cost of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though the party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may be enforced only by execution within three years from the date of entry of the judgment. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment."

Renumber accordingly

HB 1312

Date: 2-10-05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

Check here for Conference Committee

Legislative Council Amendment Number

AS AMENDED

Action Taken

DO PASS

Motion Made By

BRANDENBURG

Seconded By

KREIDT

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE		✓
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER	✓		REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD		✓
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT	✓				
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes)

11

No

2

Absent

0

Floor Assignment

MUELLER

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

REPORT OF STANDING COMMITTEE

HB 1312: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1312 was placed on the Sixth order on the calendar.

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 deficiency judgments on agricultural land; and to amend and reenact section 32-19-06 of the North Dakota Century Code, relating to foreclosures of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court ~~may~~ shall render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action; and ~~may~~ shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises sold be delivered until after the expiration of the ~~one-year~~ redemption period unless otherwise ~~allowed~~ ordered by the court pursuant to section 32-19-19. The court shall direct, and the judgment must provide, that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may

not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.

SECTION 2. A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

Deficiency judgments on agricultural land. If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the cost of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though the party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may be enforced only by execution within three years from the date of entry of the judgment. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment."

Renumber accordingly

2005 SENATE AGRICULTURE

HB 1312

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1312

Senate Agriculture Committee

Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		2259 - 5837
1		x	3725 - 4738

Committee Clerk Signature



Minutes:

Chairman Flakoll opened the hearing on HB 1312, a bill relating to deficiency judgments on agricultural land; relating to foreclosures of real estate mortgages.

Steve Tomac, executive director North Dakota Farm Credit Council a consortium of the four Farm Credit organizations in North Dakota, testified in favor of the bill. (written testimony) Mr. Tomac said North Dakota Farmers Union representatives are not here today because they are attending a funeral. They would like to offer an amendment (attached). North Dakota Farmers Union has been supportive of the bill, as a matter of fact, the bill before the committee is a compromise bill because North Dakota Farmers Union had some concerns that have been addressed. The amendment is clarifying language. The bill currently says there are 3 years to execute and enforce a deficiency judgment. There seems to be a question in some minds if that means 3 years to attach something or 3 years to collect the judgment. This amendment clarifies that if a deficiency judgment is granted on agricultural property, there are 3 years to collect it.

This is a difference between agricultural and commercial property because on commercial property it becomes a money judgment and you have 10 years plus an additional 10 year renewal if requested. While this seems to challenge some philosophies because the memories of the 1980's are still fresh, there have been, to his knowledge, only 2 deficiency judgments in the last 20 years. Malcolm Brown has obtained the only successful commercial deficiency judgment that was tried and Grand Forks Farm Credit filed a deficiency and was successful on agricultural property in the Devils Lake area in 1988 or 1989 that was eventually overturned by the Supreme Court. This is a section of the law that is not used very often.

Senator Erbele asked in a scenario where someone purchased property for \$100,000, at 65% they would get a loan for \$65,000, there was a severe downturn and the property was sold for \$50,000. How are other assets attached.

Mr. Tomac said if it wasn't real estate, if it was a tractor or cows, and the lender pursued the default, took the property and sold it and was short of satisfying the debt, they could go to the court, get a judgment which would be converted to a money judgment and they would have 10 years plus a 10 year renewal to try to find that deficiency. With real estate, the lending institution, after the foreclosure process, would end up with the \$15,000 on the real estate. They would then make a determination if other assets are available and whether or not it would be cost effective to do another judicial action to attempt to get a deficiency judgment. They would employ the sheriff to serve it and they would have 3 years to collect it. In the 1980's the Farm Credit Council didn't have any problem charging that off because it was all they had, they were truthful. The struggle was when losses were generated when a borrower comes in and turns in those 2 quarters of land and says this is all you get. The lenders arms were tied because the

deficiency judgment process was so onerous and the jury trial was so limiting. The other members of the cooperative had to pay. These people had the ability to pay and they didn't. Senator Erbele asked about the example with chattels and machinery. With a default, is there the ability to attach real estate.

Mr. Tomac said he believes so, the problem is if the loan is cross collateralized, they are governed by the deficiency judgment process on the real estate. (meter 3859)

Senator Taylor said in the 1980's were lenders extending more than 65% in the real estate market, and is there any guarantee a young farmer could find 80% to purchase land if these changes are made.

Mr. Tomac said that is correct, there is no guarantee. The lender will weigh the risk. The problem now, in a competitive land market, many borrowers don't have the 35% but its that quarter next door that only comes up once every generation, This would give us the opportunity to lend into those opportunities.

Dennis Laumb, Valley City farmer and Director of AgCountry Farm Credit Services in Fargo and Chairman of the North Dakota Farm Credit Council, testified in favor of the bill. (written testimony) (meter 4192)

Senator Klein asked if this applies to banks equally as they do Farm Credit. (meter 4443)

Mr. Laumb said yes, although he is not an expert.

Senator Klein said what we are doing is making it a little easier for the lender to go back and collect what was borrowed. In turn, hopefully, this will make more money available to the borrower.

Mr. Laumb said that is correct, it is a moral obligation to pay back what was borrowed.

Senator Klein said lenders didn't think they would be able to wiggle out of the payment.

Mr. Laumb said he can't answer completely. As a farmer, he has seen it happen once in his community. It is very seldom. Current lending will stay in effect, this would not affect existing loans.

Senator Seymour asked if he said farmers hold lending institutions hostage. (meter 4777)

Mr. Laumb said if the obligations are not met and an unscrupulous borrower understands the law, the lender can't go to the other side of the balance sheet to collect.

Senator Taylor said as farming evolves into more of a business, will there be a growing number of farmers who are sharp enough to take advantage of the law as it stands.

Mr. Laumb said in his area, he doesn't see that happening.

Claude Sem, CEO of Farm Credit Services of Minot, testified in favor of the bill. (written testimony) (meter 5045) It is very true, borrowers usually try to make their payments. How do we get up to a 80 -90% level on land? Land value enters in. This bill will help to identify people who can make the payments and won't. They have had millionaires with other assets that turned in their land and they couldn't pursue them. With young farmers, they try to work with them as hard as they can, 85% penetrating loans with them is not uncommon. The countryside is changing, buyers from out of state are buying land, if they want to give it back, they can under the existing law.

Jim Schlosser, North Dakota Bankers Association, testified in favor of the bill. (meter 5442)

They did not attend the hearing on the house side. This will only be used when the borrower has the ability to pay. He helped with the legislation on deficiency judgments on commercial loans in 1993. As a result, it caused the secondary market to increase greatly. There was not an

Page 5

Senate Agriculture Committee

Bill/Resolution Number HB 1312

Hearing Date March 3, 2005

increase in deficiency judgments because the law brought borrowers to the table to negotiate.

Lenders do not want property back but if the loan isn't repaid, other borrowers pay the price.

They strongly support the bill.

Vice Chairman Erbele closed the hearing on HB 1312.

Senator Erbele moved the amendment regarding the judgment being collected in 3 years.

Senator Taylor seconded the motion.

Senator Taylor asked why it is necessary.

Senator Flakoll said it clears up if there are 3 years to attach or collect.

The motion passed on a roll call vote 6 - 0 - 0.

Senator Erbele moved a do pass as amended on HB 1312.

Senator Urlacher seconded the motion.

Senator Taylor said it is probably a decent bill but its hard to get excited about it. He has concerns with lobbyists shopping bills themselves rather than a legislator.

Senator Seymour said he doesn't like these bills, they have worked on it and made some changes.

They are not for the farmer necessarily.

Senator Erbele said they are good bills, he doesn't have a lot of passion for them, he sees a need for it.

Senator Urlacher said he objects to people being able to tie up land for five years and bleed it to death and devalue it while the rest of us pay. It is not a widespread problem but it is there. Most people feel obligated to pay when they can.

The motion passed on a roll call vote 6 - 0 - 0.

Senator Klein will carry the bill.

Amendment to HB 1312

On page 3, line 17: after "judgment." insert "If the judgment is not collected within three years it expires."

*recommended by Farmers Union
distributed by Steve Tomae.*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1312

Page 3, line 17, after the ^{*underscored*} period insert "If the judgment is not collected within three years ^{*the judgment*} it expires."

Renumber accordingly

Date: 3/3/05
Roll Call Vote# 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *Engrossal HB 1312*

Senate Agriculture

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Move Amendment (3 yrs to collect)*

Motion Made By *Sen. Erbele*

Seconded By *Sen. Taylor*

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) *6* No *0*

Absent *0*

Floor Assignment

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

Date: 3/3/05
Roll Call Vote # 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Enrossed HB 1312

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Sen. Erbele Seconded By Sen. Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Klein

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2005 8:42 a.m.

Module No: SR-41-4240
Carrier: Klein
Insert LC: 58256.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1312, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1312 was placed on the Sixth order on the calendar.

Page 3, line 17, after the underscored period insert "If the judgment is not collected within three years, the judgment expires."

Renumber accordingly

2005 TESTIMONY

HB 1312



North Dakota Farm Credit Council

AgCountry FCS • FCS of Grand Forks • FCS of Mandan • FCS of North Dakota

Testimony by Steve Tomac
Executive Director, NDFCC

HB 1312

January 21, 2005

Madam Chair and members of the House Agriculture Committee, HB 1312 changes the way we approach deficiency judgments on agricultural properties and HB 1315 makes changes to the redemption period on agricultural properties. On behalf of the four Farm Credit associations in North Dakota, let me say that this is an appropriate time to debate these issues. It is a time that we are not presently challenged by high delinquency rates and we can approach these issues reasonably and without high emotion.

The four Farm Credit associations in North Dakota have a combined customer base of about 18,000 farmers who borrow some \$2.3 billion. Farm Credit associations are cooperatives that were created by Congress in 1916 and are charged with serving every rural county in the United States. Each cooperative is governed by a board of directors who are elected by the members. Several of the board members are here this morning.

We understand that some are concerned that these two bills take away debtor protections. We believe that the current laws limit the opportunity of many borrowers and these two bills will actually create opportunity for those farmers. As you all know, every opportunity has some price. Ultimately I think the question before the Committee will come to this....is the creation of opportunity worth the price of modifying the debtor protections? The farmer boards that set the policies for the Farm Credits in North Dakota think it is.

As you may know, the deficiency judgment statutes allow lenders, who have initiated a foreclosure action, to seek a judgment against the borrower if the value of the foreclosed real estate is less than the debt. Up until 1951, North Dakota did not allow deficiency judgments of any kind. It is my understanding that this was one of the debtor protections that came about in the early 1900's when banks were usurious and unscrupulous. The change in 1951 applied to both commercial property and agricultural property. The 1993 Legislature revised the deficiency judgment statutes for commercial property but left the process for agricultural properties the same as they have been since 1951. HB1312 makes the deficiency judgment process for agricultural properties the same as commercial properties.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

AgCountry FCS
49 38th Street SW
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.aqcountry.com

FCS of Grand Forks
2424 32nd Avenue South
Grand Forks, ND 58201
701-775-3193 • 800-288-3982
www.fcsdirect.com

FCS of Mandan
1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota
3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

The key differences between commercial and agricultural properties are as follows:

1. The amount of a deficiency judgment for a commercial property is determined in the same legal proceedings as the foreclosure. For agricultural property, a separate action is required within 90 days after the Sheriff's sale.
2. The amount of a deficiency judgment for commercial property is determined by the Judge who bases his decision on the fair market value as estimated by an appraiser. The amount of a deficiency judgment for agricultural property is based on a jury's determination of "fair value".
3. The time period for collecting the judgment for commercial property is ten years with the option for a ten year renewal. The time period for collecting judgments for agricultural property is presently 3 years with no renewal.
4. In the commercial property process, notice that the lender has the right to obtain and collect a deficiency judgment must be given in both the note and the mortgage. For agricultural property, notice that the lender intends to seek a deficiency judgment must be given in the Foreclosure Summons and Complaint.

Agricultural lending has risks. Two of the risks that lenders have are controlled by these two bills. If lenders cannot look to the borrowers other assets to satisfy the debt on agricultural real estate loans that go into default, then lenders will adjust the loan to value ratio to a reasonable risk. Have you ever wondered why the standard loan to value ratio is 80% for commercial property and 60-65% for agricultural property? Granted some of the difference is in the weather and price risk, but from a lenders stand point, not being able cross collateralize or seek a deficiency judgment and the length of time the borrower has control of the property while it is in default, dictate a part of that difference in the loan to value ratio.

Madam Chair and members of the Committee, there are many opportunities in agriculture. Being able to capitalize on those opportunities requires good judgment and capital. These two bills would allow agricultural lenders to borrow additional capital into those opportunities for those that can demonstrate good judgment.

Madam Chair and members of the Committee, we recognize that there is a great deal of apprehension in modifying this statute. To address those concerns, I am happy to report that we are very close to agreeing on amendments with Farmers Union. However we haven't had time to finish drafting those amendments. Those amendments include eliminated the jury trial and requiring the judge to base the deficiency judgment on a fair market value. I would respectfully ask the committee to withhold action until the amendments are presented to the committee.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

Country FCS
1749 38th Street SW
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.aqcountry.com

FCS of Grand Forks
2424 32nd Avenue South
Grand Forks, ND 58201
701-775-3193 • 800-288-3982
www.fcsdirect.com

FCS of Mandan
1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota
3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

HB 1312

Mr. Chairman and members of the House Agriculture Committee, my name is Dennis Laumb. I am a farmer from the Valley City area and I am the Chairman of the North Dakota Farm Credit Council. I am also a director for AgCountry Farm Credit in Fargo. I am here to testify in support of changing the Deficiency Judgments for agricultural property.

Borrowers have a personal obligation to pay the dollar amount that he agreed to when loan obligation was established. When those obligations are not met and his balance sheet is still strong enough to cover his indebtedness, that is when we need a Deficiency Judgment. The present law hinders financial institutions pursuing a judgment because it is extremely costly. Under ND law these legal costs cannot be passed on to the borrower and must be paid by the lending institution. Or the lender may elect not to pursue the judgment and absorb the loss. In either case our existing customers must absorb the loss – this is inefficient and unfair.

I would feel more comfortable if I could on my Cenex cap to finish my testimony. I farm in Northern Barnes County, and from the farmer side, I think that the present-day farmers are businesspeople, who understand the risks and potential losses involved with financing farm real estate. A change in the deficiency judgment would allow the market place to operate more efficiently – it is about opportunity -- those who take the financial responsibility for the risk as well as for rewards.

Agriculture business success requires equal amount of skill and passion in the areas of production, marketing and finance management. Passion however is not enough. Skill makes the dreams of young farmers real and transforms into good work. A change in the law, could allow more money to be lent on transactions. The down payment could be reduced and allow for greater opportunity.

The great majority of the farmers want to pay back their obligations and strive to do that because of their conviction in doing the moral right thing. It is those few who are not willing to payback their obligations even though they have a strong balance sheet and are able to do. They don't have the same integrity as their neighbor.

By changing the present law, it allows lending institutions – to borrow into that opportunity – while not getting held hostage by the borrower who wants to leverage one side of his balance sheet only. I don't get points for being a director of a cooperative -- it is what is delivered back to them that count. I see and recognize the need for change in the law.



North Dakota Farm Credit Council

AgCountry FCS • FCS of Grand Forks • FCS of Mandan • FCS of North Dakota

Testimony by Steve Tomac
Executive Director, NDFCC

HB 1312

March 3, 2005

Mr. Chairman and members of the Senate Agriculture Committee, HB 1312 makes two changes in the deficiency judgment process on agricultural properties and HB 1315 changes the starting time for redemption period on agricultural properties. On behalf of the four Farm Credit associations in North Dakota, let me say that this is an appropriate time to debate these issues. It is a time that we are not presently challenged by high delinquency rates and we can approach these issues reasonably and without high emotion.

The four Farm Credit associations in North Dakota have a combined customer base of about 18,000 farmers who borrow some \$2.3 billion. Farm Credit associations are cooperatives that were created by Congress in 1916 and are charged with serving every rural county in the United States. Each cooperative is governed by a board of directors who are elected by the members. Several of the board members and CEO's are here this morning.

As you may know, the deficiency judgment statutes allow lenders, who have initiated a foreclosure action, to seek a judgment against the borrower if the value of the foreclosed real estate is less than the debt. Up until 1951, North Dakota did not allow deficiency judgments of any kind. It is my understanding that this was one of the debtor protections that came about in the early 1900's when banks were usurious and unscrupulous. The change in 1951 applied to both commercial property and agricultural property. The 1993 Legislature revised the deficiency judgment statutes for commercial property but left the process for agricultural properties the same as they have been since 1951. The key differences between commercial and agricultural properties are as follows:

1. The amount of a deficiency judgment for a commercial property is determined in the same legal proceedings as the foreclosure. For agricultural property, a separate action is required within 90 days after the Sheriff's sale.
2. The amount of a deficiency judgment for commercial property is determined by the Judge who bases his decision on the fair market value as estimated by

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

AgCountry FCS

1749 38th Street SW
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.aqcountry.com

FCS of Grand Forks

2424 32nd Avenue South
Grand Forks, ND 58201
701-775-3193 • 800-288-3982
www.fcsdirect.com

FCS of Mandan

1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota

3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

an appraiser. The amount of a deficiency judgment for agricultural property is based on a jury's determination of "fair value".

3. The time period for collecting the judgment for commercial property is ten years with the option for a ten year renewal. The time period for collecting judgments for agricultural property is presently 3 years with no renewal.
4. In the commercial property process, notice that the lender has the right to obtain and collect a deficiency judgment must be given in both the note and the mortgage. For agricultural property, notice that the lender intends to seek a deficiency judgment must be given in the Foreclosure Summons and Complaint.

As amended HB1312 changes only two of the differences in the deficiency judgment process between agricultural properties and commercial properties. As amended, HB 1312 eliminates the jury trial and requires the judge to base the amount of the deficiency judgment on a universally accepted definition of fair market value.

Agricultural lending has risks. Two of the risks that lenders have are controlled by these two bills. If lenders cannot look to the borrowers other assets to satisfy the debt on agricultural real estate loans that go into default, then lenders will adjust the loan to value ratio to a reasonable risk. Have you ever wondered why the standard loan to value ratio is 80% for commercial property and 60-65% for agricultural property? Granted some of the difference is in the weather and price risk, but from a lenders stand point, not being able cross collateralize or seek a deficiency judgment and the length of time the borrower has control of the property while it is in default, dictate a part of that difference in the loan to value ratio.

Mr. Chairman and members of the Committee, there are many opportunities in agriculture. Being able to capitalize on those opportunities requires good judgment and capital. These two bills would allow agricultural lenders to borrow additional capital into those opportunities for those that can demonstrate good judgment.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

Country FCS
1749 38th Street SW
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.aqcountry.com

FCS of Grand Forks
2424 32nd Avenue South
Grand Forks, ND 58201
701-775-3193 • 800-288-3982
www.fcsdirect.com

FCS of Mandan
1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota
3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

Senate Ag Committee

Mr. Chairman and members of the Agricultural Committee, my name is Claude Sem, CEO of Farm Credit Services of North Dakota which is located in Minot, North Dakota.

I am in favor of Bill 1312. Following a foreclosure, deficiency judgments are used if the sale of collateral is inadequate to repay the loan. Most borrowers do whatever it takes to make payments on their real estate loans. FCS works with debtors to try and ensure the landowner retains ownership. Unfortunately there are times when circumstances require collection of the debt owed on the property. In those cases the property is sold and those proceeds are applied to the loan. This bill would provide an avenue for lenders to address shortfalls that may be present after the sale. This bill is intended to address those people who have the ability to pay for their obligations but refuse to do so. It will not affect those who work with their lenders. Commercial debtor laws are written to allow for a deficiency judgment, agricultural debtor laws do not afford a similar benefit apart from a trial by jury.

Your "Do Pass" consideration of Bill 1312 would be greatly appreciated.

Mr. Chairman and members of the Senate Agriculture Committee, my name is Dennis Laumb. I am a farmer from the Valley City area and am here to testify in support of changing the Deficiency Judgments for agricultural real estate property.

Borrowers have an obligation to make their loan payments. When borrowers fail to make their payments, (even when they have the means to do so,) deficiency judgments are necessary in cases where the collateral is less than the loan amount. North Dakota has unique laws that make these judgments costly and difficult to obtain. Other borrowers who are paying their bills ultimately absorb the legal costs and loan losses incurred by the lender - this is inefficient and unfair.

Present-day farmers are business people that should understand the risks and potential losses involved with financing farm real estate. A change in the deficiency judgment law would allow the market place to operate more efficiently. It is about opportunity - those who take the financial responsibility for the risk as well as for the rewards.

Success in agriculture requires an equal amount of skill and passion in the areas of production, marketing and finance management. Passion, however, is not enough. Skill makes the dreams of young farmers real and translates into good work. A change in the law would allow more money on transactions, capital requirements could be reduced and provide for greater opportunity for lending institutions to help them.

The great majority of the farmers want to pay back their obligations and strive to do that because of their conviction in doing the morally right thing. I am talking about those few who are not willing to payback their obligations and understand the present day law. Even though they have a strong balance sheet and should be able to pay, they don't have the same obligation as their neighbor.

Changing current law will allow lending institutions to borrow into that opportunity and not get held hostage by the borrower who only wants to leverage one side of his balance sheet. Modification to the Deficiency Judgments legislation is fair and will result in less restrictive lending for farm real estate loans, which will ultimately provide greater opportunities for our farmers.

Testimony submitted by Dennis Laumb, Valley City Farmer, Director of AgCountry Farm Credit Services in Fargo and Chairman of the North Dakota Farm Credit Council.