

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2232

2005 SENATE JUDICIARY

SB 2232

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2232

Senate Judiciary Committee

Conference Committee

Hearing Date January 24, 2005

Tape Number	Side A	Side B	Meter #
1	X		5809 - End
1		X	0.0 - 1900
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to foreclosure of a mortgage.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Mr. Malcolm H. Brown, Attorney At Law, Introduced the Bill. (meter 5809) Gave testimony - Attachment #1. Sen. Traynor stated wasn't it a requirement of recording a foreclosure with in two weeks. Yes. The names of the Real property committee were named. (meter 260) Sen. Traynor asked if we still have to give notice before foreclosure? Yes. This bill only cleans up the language in the existing with out changing the language of the bill.

Testimony in Opposition of the Bill:

Jim Schlosser, ND Bankers Assoc. While supporting the intent of the Title's Standards Committee, we had concerned with the Short Term Mortgage Redemption Act 3219.1. I t would change the forms of procedures for financial institutions of the state. We went back and forth.

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Senate Judiciary Committee

Bill/Resolution Number SB 2232

Hearing Date January 24, 2005

With 24 sections amended and 13 sections repealed, while we support unnecessary language and the current procedure is not perfect, we need a comfort level in the changes being made.

Discussed foreclosure law differences between states and types of foreclosures. Page 9, sec. 12, line 14-15; I did not find a repealed. In that section of the code it states 60 days after the sale.

My concern is that we have assurance that the "forms" and the "process" has not changed.

Testimony in Opposition of the Bill:

Mr. Glenn A. Elliott - Consumer (meter 940) I am in question on page 8 and 9? 60 days the funds can be forfeited. \$1000 is a sizable amount. In 3219.22 I like certified mail and it is acceptable in many business. Mr. Elliott discussed the merits of certified mail and the signature process.

Testimony Neutral of the Bill:

Sen Steve Tomak - ND Farm Credit Council. (meter 125) We do not have a position on the bill but we have the same issues as Mr. Brown does. We are also monitoring HB 1312 and HB 1315. There contents may change two sections of this bill. Senator Triplett stated that the last bill to pass is the one that will take precedencies. Senator Triplett asked if we could incorporate the contents of these two bills into this bill, so we do not compete for the last one.

Donald Forsberg #143, ICBND (meter 1500) I commend the Bar Assoc. for all of their hard work. Stated that this is an extensive modification and we too are concerned by the impact.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2232

Senate Judiciary Committee

Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
1	X		1368 - 2649
1		X	3660- 3670
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to foreclosure of mortgage.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with committee work:

Sen. Traynor handed out an amendment Att #1. The committee reviewed the amendment. They discussed the certified mail process, signature and the return receipt request. They referenced the "rules of civil procedure as provided in rule 4. and an additional reference in 32.19.1

Senator John (Jack) T. Traynor, Chairman closed the Hearing

The committee reconvened to act on the bill (side 2 meter 3660)

Sen. Trenbeath made the motion to pass the amendment - Att #1 and further amend to include certified mail and change of title. **Senator Triplett** seconded the amendment, all were in favor.

Senator Triplett made the motion to Do Pass as amended and **Sen. Trenbeath** seconded the motion. All were in favor.

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Senate Judiciary Committee

Bill/Resolution Number SB 2232

Hearing Date February 1 , 2005

Carrier: **Sen. Traynor**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

PROPOSED AMENDMENTS TO SENATE BILL NO. 2232

Page 6, line 25, after "fair" insert "market"

Page 6, line 26, after the first "fair" insert "market" and replace "determination of the fair value must be submitted to a jury" with "court"

Page 6, line 27, remove "and a deficiency judgment", replace "be rendered" with "render a deficiency judgment", after "fair" insert "market", replace "is" with "as", and replace "jury" with "court"

Page 6, line 28, replace "to be" with "is"

Page 6, line 29, after "fair" insert "market"

Page 6, line 30, after "fair" insert "market"

Page 7, line 2, after the underscored period insert "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."

Page 9, line 16, after "the" insert "filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2232: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2232 was placed on the Sixth order on the calendar.

Page 1, line 2, after "sections" insert "28-23-04, 28-24-02,"

Page 1, line 5, after "32-19-41" insert "and subdivision a of subsection 1 of section 35-03-19"

Page 1, line 8, after "32-19-34" insert "and chapter 32-19.1"

Page 1, after line 9, insert:

"SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to the making of the sale; and
2. In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 or ~~32-19.1~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

SECTION 2. AMENDMENT. Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year (~~six months in redemptions under subsection 1 of section 32-19.1-04~~) after the sale on paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest."

Page 6, line 25, after "fair" insert "market"

Page 6, line 26, after the first "fair" insert "market" and replace "determination of the fair value must be submitted to a jury" with "court"

Page 6, line 27, remove "and a deficiency judgment", replace "be rendered" with "render a deficiency judgment", after "fair" insert "market", replace "is" with "as", and replace "jury" with "court"

Page 6, line 28, replace the first "to be" with "is"

Page 6, line 29, after "fair" insert "market"

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Page 7, line 2, after the underscored period insert "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."

Page 9, line 16, after "the" insert "filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the"

Page 10, line 14, after "mail" insert ", as provided in rule 4 of the Rules of Civil Procedure."

Page 10, line 18, after "mail" insert ", as provided in rule 4 of the Rules of Civil Procedure."

Page 11, line 5, after "mail" insert ", as provided in rule 4 of the Rules of Civil Procedure."

Page 14, after line 24, insert:

"SECTION 29. AMENDMENT. Subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Mortgage" means a mortgage or mortgage lien ~~governed by the Short term Mortgage Redemption Act as provided in chapter 32-19.1~~ covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less."

Page 14, line 26, after "32-19-34" insert ", and chapter 32-19.1"

Re-number accordingly

2005 HOUSE JUDICIARY

SB 2232

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2232

House Judiciary Committee

Conference Committee

Hearing Date 3/2/05

Tape Number	Side A	Side B	Meter #
1	xx		26.6-46.2
1		xx	14.7-19
Committee Clerk Signature <i>AAnn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Zaiser).

Chairman DeKrey: We will open the hearing on SB 2232.

Malcolm Brown, Real Property Section of the State Bar Association: Explained bill (see written testimony).

Chairman DeKrey: We've already passed those two changes in two HB 1312 and 1315, and so this language just mirrors two bills that we've already changed, already passed in the House.

Malcolm Brown: HB 1312 has passed by the House, is the same as section 6 of this bill, starting on page 3 and HB 1315 is very similar to the language on page 2, section 2. The only difference is that HB 1315 still refers to the chapter on short term mortgage redemption and section 2 of this bill removes that. Those bills have passed the House, they are being heard by the Senate Ag committee tomorrow. They are consistent with SB 2232, just on a different track.

Representative Delmore: In Section 7, deficiency judgments, can you tell me why you changed line 23 from 90 to 20 days.

Malcolm Brown: What line was that again.

Representative Delmore: Line 23, page 5, section 7. You changed 90 to 20 days. Within 20 days after completion of the appraisal, the appraiser shall provide the plaintiff the file with the clerk of court a written report,...

Malcolm Brown: Actually, the 90 and the 20 also go with the elimination of the later filing of the service of the pleading. In other words, if you strike out the language regarding service of the pleading, which the 90 days refer to, the 20 days after the completion of the appraisal...page 5, line 23, Rep. Klemin.

Representative Koppelman: On page 10, under redemption, section 14, talking about a party in a foreclosure action, but back on page 6, you're changing, and this has to do with the section that Representative Delmore was referring to, dealing with deficiency judgments, on the bottom of page 6, line 30, you're changing foreclosing party to the plaintiff. Why that change, because the plaintiff, to me, implies a party to a court action; whereas foreclosing could be a court procedure.

Malcolm Brown: This chapter, 32-19 deals with foreclosure by action in district court. The only foreclosures that are done by advertisement, I think the Bank of ND might still be able to do that, but commercial banks are all foreclosure by court action.

Representative Boehning: On page 10, section 14, line 23, it talks about the owner of the property has a paramount right to redeem upon paying the amount bid at the sheriff's sale, so if he owes less at the sheriff's sale, he can redeem it for the lesser amount of the loan, or what he owes on it.

Malcolm Brown: That's correct, but that's true today. I can't imagine a plaintiff, commercial bank or whatever, bidding in less than they've got coming, unless they had other collateral, but you're right, the owner would only have to pay the amount bid.

Representative Klemin: Isn't that the point of the deficiency judgment, why would you want to bid in your amount of the bid that you would not be able to get a deficiency judgment.

Malcolm Brown: There are a lot of factors that go into whether a creditor is going to try and get a deficiency; the value of the property, other collateral, it's hard to predict what all those reasons would be. Again, if the owner wanted to redeem, all they have to do is pay that amount.

Representative Klemin: I understand that. Typically, there is a credit that's put in by the plaintiff for the amount of the judgment, but if you do that, there's no deficiency, so if you are looking at a deficiency judgment, you would want to bid less than the amount of the judgment.

Malcolm Brown: You would bid less than your debt. Correct.

Chairman DeKrey: Thank you.

Sen. Jack Traynor: I'm here today because I just love the law on foreclosures. I wanted to just mention that Malcolm Brown covered the material very well and I thought your questions were well framed. But in the section on the notice before foreclosure on page 11, our Sen. Judiciary Committee, I was concerned about the notice and we added that phrase on line 21, that the notice before foreclosure be served as provided in Rule 4 of the Rules of Civil Procedure, which is the generally accepted way of determining that sufficient notice is given. The reason we did that, was the notice before foreclosure is a critical point in the procedure. It tells the debtor, you better get to the bank and settle this matter, and we wanted to make sure that the debtor go the notice.

Representative Klemin: Malcolm Brown indicated that the Sen. Judiciary Committee had amended this bill in one place to refer to fair market value where it said fair value and suggested we make a similar change on page 3, line 7, where it still says fair value. Why didn't you make that amendment in the Senate.

Sen. Jack Traynor: It was just overlooked.

Representative Klemin: So if you had to do it over again, you probably would have marked it in there too.

Sen. Jack Traynor: Right, we're not perfect.

Chairman DeKrey: Thank you. Further testimony in support of SB 2232.

Steve Tomak, Farm Credit Services: I agree with what Mr. Brown indicated, and explain our reasoning for making the amendments to the redemption period in the deficiency phase. As the Chairman pointed out correctly, the content in this bill is identical to HB 1312 and HB 1315. When we became aware that this bill was floating through the Senate, that it was modernization and didn't change the intent, we were concerned that the rule is, the last bill passed takes preference. We were concerned that this would be the last bill passed and that would undo all the work we did on HB 1312 and HB 1315. So that's why they were gracious to allow us to amend that into this bill. That's why you see the same language from 1312 and 1315 in this bill. I just wanted to explain that.

Representative Koppelman: So, the language in those other two bills, or the issues addressed in the language in those two bills, the issues addressed in the language of the other two bills was not originally part of this legislation.

Steve Tomak: We appeared at the original hearing. So the committee did address that, they reviewed that, and it was amended into this bill.

Representative Koppelman: But the language of the original bill is not

Steve Tomak: The original bill only modernized the language and didn't change the intent of the law.

Chairman DeKrey: Thank you. Further testimony in support of SB 2232.

Jim Schlosser, ND Bankers Association: We certainly support the intent of the bill and the title standards committee and the real property section to eliminate unnecessary language. I would have to say, however, when you amend 24 sections of law and repeal 13 sections in one chapter, you want to have a comfort level that this does not change the procedure. I believe that Mr. Brown, has indicated very clearly, that this is not to change the procedure. I do understand with the repeal, the short term mortgage redemption act, which requires on a mortgage form you have in large letter, short term mortgage redemption act, that will no longer be necessary. I wanted to make sure the legislative intent is that after August 1, that if the form is used, that that is not a valid mortgage, and I believe that is the legislative intent of the legislation. So in effect, the last thing I want after I retire the form, is for somebody to call and ask what happened here, we're changing the procedure, and I do have, after checking the engrossed bill with the current statute, a comfort level that that is not the case. I would echo the fact that we believe these are good changes in the law and does in effect streamline the law. The system has worked well and we want it to continue to work well.

Representative Onstad: On the top of page 3, it deals with foreclosure changes to residential property of four or fewer units of up to 40 contiguous acres. Please explain that, why doesn't just say up to 40 contiguous acres.

Jim Schlosser: That is no change from the current, they were just transferring that over from the short term mortgage redemption act that it only applied to residential property or properties of 40 acres or less.

Representative Onstad: You cannot obtain a deficiency judgment on property of 40 acres or less.

Jim Schlosser: That allowed a shorter redemption period and you could only do that if it were 40 acres or less, it would not apply to agricultural land. If you notice here, the redemption period is different for agricultural land, than it is for residential or commercial property on 40 acres or less.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Representative Kretschmar: I have a question for Malcolm Brown in regard to mortgage foreclosure bill, could you just briefly outline how the period of redemption on agricultural land over 40 acres will change under the bill.

Malcolm Brown: That's true, yes it would.

Representative Kretschmar: How will it change.

Malcolm Brown: The period of redemption now in a mortgage foreclosure of land over 40 acres, does a sheriff sale, and it would be one year. This bill, section 8, I believe it is, no section

14, on page 10, the period of redemption would start the day the complaint is filed with the district court, but would not expire sooner than 60 days after the sheriff's sale. Say that this was a contentious foreclosure and it took 18 months to get to court and another 60 days before the sheriff sale. The period of redemption would be well over a year, but in effect it wouldn't expire until 60 days after the sheriff sale. Of course, as you know in ND, the debtor is entitled to the use and occupation of the property until the period of redemption expires.

Representative Kretschmar: They always want to get one more crop.

Representative Meyer: But it would be dropping it over 6 months.

Malcolm Brown: It could I suppose, it would never be less than a year from the time the complaint is filed.

Representative Meyer: But as the law is right now, the year starts after the sheriff sale?

Malcolm Brown: That's right.

Representative Kretschmar: And now the 60 day period will start with the sheriff sale, under this law. Even if it were beyond the year.

Malcolm Brown: Yes, it would never be less than 60 days.

Representative Kretschmar: After the sheriff sale.

Malcolm Brown: Yes, and it would never be less than a year..

Representative Kretschmar: From the date of filing the complaint.

Malcolm Brown: Yes, so the period of redemption could expire 8 months after the sheriff sale, because everything else went fairly quickly.

(Reopened later in the same session).

Chairman DeKrey: What are the committee's wishes in regard to SB 2232.

Representative Maragos: I move to amend the bill to change fair value to fair market value.

Representative Delmore: Seconded.

Chairman DeKrey: The amendment will be on line 7, page 3, we are adding after "fair" the word "market". Further discussion on that amendment. Motion carried.

Representative Meyer: I am planning on voting against this. As Bill Langer says, always err on the side of the farmer. This does drop the redemption period, if you're farming, down to, it could be as much as 6 months, your redemption period starts under this on the day you file, and that can be a big difference in the date of the reports, then when the one year redemption period start on the day of the sheriff sale, that can be as much as a 6 month time difference. I just plan on voting against it for that reason. There are a lot of times on agricultural property where, for example, in 1974 when we had durum bringing \$10/bushel, the same year that dropped to \$3/bushel, our interest rates went from 7% to 22%. That's why we have foreclosure laws that we have on the books now because of what happened in that year. I'm planning on voting against it, unless we take out the ag. Section.

Chairman DeKrey: HB 1312 and 1315 were my bills, and I didn't know anything about this bill and I didn't know they were going to roll it into this bill. My reasoning for this was why I put those bills in, why I wanted to change the redemption period. I farm and ranch, and when I go into my bank and update my loan every year like I have to do, my question to my banker, why does it always cost farmers more to set up loans, and loan fees are more expensive, and we don't get the same interest rates as commercial loans do. Why is that difference, are our loans that much more riskier than commercial loans. He said no, on agricultural loans that they have protections against deficiency judgments and the redemption periods are two of them that

commercial property doesn't share to the extent that agriculture loans do, and those costs of agricultural loans have to be put upfront in the loan to make up their investment in you, should your loan go bad. I put the bill in to try to contract it so that ag loans would be on fair footing with commercial loans. The reason I have this concern, is that banking has changed so much than the way it used to be. It used to be that you could draw a 30 mile circle around a bank and that's all those people did, and that's the only area that they served, but nowadays just about everything is an international bank. They can buy mortgages and everything from way out on the east coast or they can invest in foreign investments, so that is why I put the bills in. I certainly respect your opinion if you don't like that and you don't want to change it, I don't have any problem with that, Shirley.

Representative Meyer: Well, if they would come with a guarantee that they'll drop the interest rates, they say that to you, but I just don't see that happening.

Representative Delmore: Rather than kill the bill, we would be better off taking that section off. I think there are some things probably needed in here, some redundancies, changes, etc.

Chairman DeKrey: Do you want to wait awhile, our two bills have already passed. They are now over in the Senate.

Representative Delmore: Maybe we can do some further checking that way, that does seem like a very legitimate bone of contention for many members of this committee, if so, we should probably do it. There is no appropriation so there's no reason to get it out today.

Chairman DeKrey: We will wait to take further action on this bill until next week.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2232

House Judiciary Committee

Conference Committee

Hearing Date 3/8/05

Tape Number	Side A	Side B	Meter #
2	xx		27.2-35.8
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 10 members present, 4 members absent (Reps. Maragos, Charging, Meyer & Onstad).

Chairman DeKrey: Let's take a look at SB 2232.

Steve Tomac: SB 2232, is a Bar Association bill that modernized the language on many of the sections pertaining to deficiency judgments and redemption period of both commercial and agricultural property. As you recall, I testified in support of this and let the committee know that this bill actually contained two bills which had already passed the House and were included in this bill because we were concerned about the last bill passed taking preference. Representative Meyer indicated some concerns and what this amendment does is it clarifies what's already in the code, it does not make any changes. There is some confusion and in consultation with a number of different attorneys, apparently page 8, line 4, the statement that any deficiency judgment obtained may only be enforced by execution within 3 years from the date of entry of the judgment is open to some interpretation, apparently. There is some interpretations whether you need to have it enforced within 3 years, does that mean it needs to be collected within 3 years,

does that mean if you enforce it or execute it, can it then go on like a money judgment for 20 years. There was that question, and by agreement and compromise with Farmers Union and Representative Meyer, this is clarifying language that just says that if you don't collect it in three years, you lose it. It's a simple amendment, it's just for clarification.

Representative Koppelman: Does current law say this about deficiency judgments. I think most judgments are 10 years.

Steve Tomac: Actually, I believe it's a 10 year with a 10 year renewal.

Representative Koppelman: So this shortens that to 3 years.

Steve Tomac: For agricultural property only. In present law, agricultural property is limited with the language that you see, and the language actually says three years, but it's open for that interpretation, which says it must be executed within 3 years.

Chairman DeKrey: We already pay higher loan costs, we don't want it extended.

Steve Tomac: The current law is 3 years for ag land.

Representative Koppelman: Do you know why agricultural liens or judgments are treated differently than any other judgments.

Steve Tomac: Actually, the ag deficiency judgment statute evolved and all deficiency judgment statutes evolved from a period of time in the 20's and 30's when banks were unscrupulous and had usurious practices, and up to a point in 1951, no deficiency judgments were allowed on any type of property. In 1951, the statute was changed for both commercial and ag, that allowed a jury trial to determine what the fair value was, and then in those circumstances, allowed a deficiency judgment. In 1993, that statute was changed for commercial property, but not for agricultural property. The intent of our legislation, which is in 1312 and 1315, was to try

to bring agricultural property to the same place that commercial property is; but with a couple of exceptions, we're doing that. This modernizes the language.

Representative Koppelman: I move the Tomac amendment.

Representative Delmore: Seconded.

Representative Klemin: I guess I just want to point out that if you look at page 5, lines 1 and 2, it says that an existing deficiency judgment would apply, it said that no execution may be enforced after 3 years from the date of rendition of the deficiency judgment, so this would be consistent with what we're repealing, this is sort of putting it back in, language being used is a little different but I think it might be better because there's always going to be a question that we can't enforce a judgment, but it's still a lien on the property. This says it expires, so it wouldn't be a lien on the property.

Chairman DeKrey: Motion carried.

Representative Delmore: I move a Do Pass as amended.

Representative Kingsbury: Seconded.

10 YES 0 NO 4 ABSENT DO PASS AS AMENDED CARRIER: Rep. Kretschmar

Date: 3/8/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2232

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	A	
Representative Bernstein	✓		Representative Onstad	A	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2232, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2232 was placed on the Sixth order on the calendar.

Page 3, line 7, after "fair" insert "market"

Page 8, line 4, after the underscored period insert "If the judgment is not collected within three years, the judgment expires."

Renumber accordingly

2005 TESTIMONY

SB 2232

COMMENTS OF MALCOLM H. BROWN, ATTORNEY AT LAW, ON SB 2232.

Before the Senate Judiciary Committee, January 24, 2005.

I represent the Real Property, Probate and Trust Section of the State Bar Association of North Dakota. I offer these comments in support of SB 2232, a revision of Chapter 32-19, N.D.C.C., Real Estate Mortgage Foreclosures.

This Bill was drafted and introduced at the request of our Section. For those of you that have read or worked with Chapter 32-19, while certainly being able to get the job done, it was rather piecemeal in how the Chapter was arranged. SB 2232 tries to rearrange the procedures for the commencement and foreclosure of a mortgage in a manner that makes more sense. SB 2232 also repeals Chapter 32-19.1, N.D.C.C., Short Term Redemption Mortgages, and places all mortgage foreclosure law in one Chapter. The anti-deficiency portions of Chapter 32-19.1 relating to residential property and small lots (less than 40 acres) are retained in Section 2 of SB 2232.

There are some changes in SB 2232 from existing law. The first of these changes is found in Section 2 of the Bill, an amendment to Section 32-19-03, N.D.C.C., with regard to deficiency judgments. Section 2, the amendment in SB 2232, prohibits redemptions on residential properties of less than 4 units or 40 acres, but would continue to permit deficiency judgments on agricultural property.

Section 5 of SB 2232 amends existing Section 32-19-06.1 with regard to deficiency judgments on commercial real property. I believe it simplifies existing law but still provides for the obtaining of a deficiency judgment on a commercial property.

Section 6 is a new section that would provide for deficiency judgments on agricultural land. This tracks the existing Section 32-19-06 as well as case law (*Federal Land Bank v. Bergquist*, 425 N.W.2d 360(N.D. 1988), and *Schiele v. First National Bank*, 404 N.W.2d 479 (N.D. 1987)). The deficiency would be the difference between the "fair value" of the property and the debt and would be determined by a jury, not the Court.

Section 12 of SB 2232 provides for a redemption period by the debtor of 60 days after the sheriffs sale except for agricultural land which may be redeemed within 365 days after the Sheriff's sale.

The remaining sections of SB 2232 are basically a clean up of existing law and intend to make it more reader friendly, but the substance of the procedures have not changed.

Pending before the House are two bills seeking amendments to Chapter 32-19. These are HB 1312 that would change the procedure for deficiency judgments on agricultural land to track 32-19-06.1 regarding deficiency judgments on commercial property. HB 1315 would start the period of redemption at the time of filing the summons and complaint for all foreclosures, including agricultural lands, with the period of redemption ending no sooner than 60 days after the sheriffs sale. These were both heard by the House Agriculture Committee on January 21.

COMMENTS OF MALCOLM H. BROWN
ON BEHALF OF THE REAL PROPERTY SECTION,
STATE BAR ASSOCIATION OF NORTH DAKOTA, ON SENATE BILL 2232

My name is Malcolm H. Brown. I'm a lawyer here in Bismarck and appear on behalf of the Real Property Section of the State Bar Association of North Dakota.

SB 2232 was drafted by members of the Real Property Section and introduced at our request by Senators Holmberg, Traynor and Triplett and by Representative Kretschmar. As amended, it passed the Senate on February 7, 2005.

The purpose of SB 2232 is to reenact the mortgage foreclosure sections of the North Dakota Century Code found in Chapters 32-19 and 32-19.1. SB 2232 does not change the fundamental procedures with regard to the foreclosure of mortgages, but SB 2232 does eliminate much redundant language while keeping the foreclosure concept the same.

There are a few changes from existing law:

Section 8 of SB 2232 found on page 7 enacts a new Section 32-19-06.2 relating to deficiency judgments on agricultural land. This language in SB 2232 tracks the current language in Section 32-19-06.1 with regard to deficiency judgments on commercial real property. The current sections on deficiency judgments generally (32-19-03 and 32-19-06) are, in most respects, repealed.

The Senate Judiciary Committee amended this section to add the word "market" to the term "fair value" found at line 27, P.7, et seq. However, the term "fair value" remains in Section 4, page 3, and the word "market" should be added here to be consistent throughout the Bill.

Section 14 of SB 2232 found on page 10 changes the redemption period from current law. Currently property greater than 40 acres in size is subject to a one-year period of redemption after the Sheriff's sale. Section 14 of SB 2232 amends § 32-19-18 N.D.C.C. to provide that the redemption period on other than agricultural land (less than 40 acres) is 60 days after the sale (current law), and agricultural land (more than 40 acres) may be redeemed within 365 days after the filing of a summons and complaint with the Clerk, but no earlier than 60 days after the Sheriff's sale. The current law of having a redemption period of one year beginning to run on the date of the Sheriff's sale can have the effect of extending the foreclosure period for up to two and sometimes even into the third year after the foreclosure has begun.

Finally, Chapter 32-19.1 N.D.C.C. relating to short-term redemption mortgages is repealed because with the language now contained in Section 14 of SB 2232 (described above), a separate chapter of the Century Code is no longer necessary.