

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2223

2007 SENATE JUDICIARY

SB 2223

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2223**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1556

Committee Clerk Signature

Monica L. Solberg

Minutes: Relating to the satisfaction of a mortgage by an assignee.

Senator Lyson, Vice Chairman called the Judiciary committee to order. All Senators were present except for Chairman Nething. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Holmberg, introduced the bill

Mr. Brown, Real Property Probate and Trust, State Bar Assoc. (meter:15) Gave testimony – Att. #1 Sited a recent situation (meter 2:14) of the process the judge needed to do because a assignment was missing.

Sen. Olafson (meter 3:07) what protects the first lender? Page 1, line 23 in current law and in the General Fraud Laws in title 9.

Testimony in Opposition of the Bill:

Marilyn Foss, ND Bankers Assoc. (meter 6:09) Gave Testimony – Att. #2

Sen. Freibiger quested the third paragraph of Ms. Foss's testimony, the problem of fraudulent satisfactions have not occurred in the past, but we did not have a law in the book showing them exactly how to do it. Discussion of this.

Sen. Olafson asked what protects the original lender. My concern with all of the secondary mortgage transfers, the people are not always as accessible. They could live in any part of the

United States and not fall under our laws. The people who buy the loans do not buy it with out the paper trail.

Sen. Nelson asked Ms. Foss to give her an overview of the "paper trail" (meter 13:50)

Testimony Neutral to the Bill:

Clause Lemke, Assoc of Realtors (meter 15:02) Discussed the problems at closing and the inability to get paperwork. It takes months on many cases to close on some properties. I do not know if this bill helps or hurts the process. Time is of the essence when you file multiple loans.

Senator Lyson, Vice-Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2223**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2438

Committee Clerk Signature

Marina L. Solberg

Minutes: Relating to the satisfaction of a mortgage by an assignee.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee was distributed a letter stating there opinion of a DO NOT PASS from:

Greg Tschider, Mid America Credit Union Assoc. – Att. #1 and

Marilyn Foss was asked to work with Malcolm Brown to work on an amendment that the two could present to the committee – Att. #2 was the result of there work.

Sen. Olafson made the motion to Do NOT Pass SB 2223 and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

Date: 1-31-07
Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2223

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen. Olafson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Olafson

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2007 4:46 p.m.

Module No: SR-21-1716
Carrier: Olafson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2223: Judiciary Committee (Sen. Nething, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2223 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

SB 2223

HH # 1
1-22-07

Senate Judiciary Committee
January 22, 2007

Senate Bill 2223

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Senate Bill 2223 proposes to add a new section to Chapter 35-03 N.D.C.C., Mortgage of Real Property. This new law would permit a title examiner to accept a satisfaction of a mortgage by an entity where an appropriate assignment of the mortgage to that entity may be missing in the records at the County Recorders office.

Virtually all real estate mortgages on residential property are sold on the "secondary market" to various third party investors. Often they are sold or assigned more than once. Not all assignments get recorded as they should. For example if Joe and Mary grant a mortgage on their home to Local Bank, Local Bank assigns to ABC and ABC assigns to XYZ, but that assignment is not recorded, this bill would permit a title examiner to accept a mortgage satisfaction from XYZ and assume the mortgage was in fact paid and satisfied. Line 19/20 also permits the County Recorder to rely on that satisfaction to indicate that the subject mortgage is in fact satisfied.

Some have a fear that this law could lead to unauthorized mortgage satisfactions, but I believe that possibility exists today and this law would not make that probability more or less. It simply would assist in allowing the closing of real estate transactions in an expeditious manner where someone dropped the ball.

AH #2
1-22-07

TESTIMONY OF MARILYN FOSS
NORTH DAKOTA BANKERS ASSOCIATION
OPPOSING SB 2223

Mr. Chairman, members of the Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here to oppose SB 2223 and to urge a Do Not Pass recommendation from the committee.

This bill simply turns the state law for recording mortgage satisfactions on its head and does so in a way that will encourage fraud and losses for banks and others that hold mortgages to secure the repayment of loans.

Plain and simple, this bill allows a mortgage to be satisfied and discharged by people whose ownership of and title to a mortgage isn't shown on county property records. (Page 1, lines 8 through 10.) All that is needed to accomplish this is for a crook to look up the public record of the original mortgage and sign a notarized satisfaction document that parrots that data and says the person signing the satisfaction is a proper person to do so! With this, the mortgage disappears.

Once a mortgage is discharged, the mortgage can't be enforced against the land. If the discharge was **erroneous or wrongful**, the person who still owns money is supposed to pay it, but the loan is unsecured. The person who erroneously or wrongfully satisfies the mortgage is liable for damages, but frankly, that may well be an imaginary remedy. That person may not have any money or assets or may not even be able to be found. If fraudsters were troubled by the notion of being liable for money damages, they wouldn't be in the fraud business.

As a practical matter this bill solves the problems for the people who created them, but it creates problems for other lenders. That isn't an appropriate balance. Without belaboring the point, NDBA and its member banks urge a Do Not Pass for this bill.

Thank you.

Marilyn Foss, Lobbyist No. 76
North Dakota Bankers Association
701-223-5303 or 355-4538
marilyn@ndba.com

Att #1
1-31-07

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 2223

GREG TSCHIDER, MID-AMERICA CREDIT UNION
ASSOCIATION

Mr. Chairman and Members of the Senate Judiciary Committee, I am Greg Tschider and I represent the Mid-America Credit Union Association.

This bill would grant its blessing on satisfactions of mortgages which do not reflect a proper chain of title to the mortgage and satisfactions which may in fact be fraudulent. Thus, the County Recorder records would not reflect that Party A is the owner of the mortgage, however, Party A could simply allege ownership and file a satisfaction. This would negate the normal title standards requirements that are in place to protect the efficacy and legitimacy of titles, liens, and satisfactions.

The worse part of the bill is that once the mortgage is satisfied by an unscrupulous party, the mortgage is discharged. The discharged mortgage could have a very large unpaid balance, and once the mortgage is illegally satisfied, the holder of the loan is without collateral. The potential temptation of milking a creditor out of hundreds of thousands of dollars of collateral may be too great a temptation.

Therefore, Mid-America Credit Union Association respectfully requests that the Committee vote "Do Not Pass" on this bill.

Thank you.

Att #2
1-31-07

January 26, 2007

Senate Judiciary Committee Members:


Malcolm Brown and we have been unable to agree upon amendments that would make SB 2223 acceptable. We continue to OPPOSE the bill. If this bill is enacted it will not only allow, but encourage mortgage satisfaction fraud. Let us give you an example:


Assume there is a mortgage loan with an outstanding balance of \$500,000. (This is no longer rare; there are many North Dakota homes that would be subject to a mortgage in this amount.) Assume the borrower decides to "cash out" and by a wrongful satisfaction of the mortgage and makes the filing that this bill validates and thus, encourages. Assume that the borrower then sells the house which is now free and clear of the mortgage. The purchaser buys the house and the seller absconds to Central America. While this plan is being carried out, all the borrower needs to do to keep the bank or other mortgage lender in the dark is to keep making the mortgage payments until the borrower leaves North Dakota!

Under current law, the borrower's act of recording a satisfaction of the mortgage would not be effective to discharge the mortgage. Under this bill, that wrongful act clearly would discharge the mortgage.

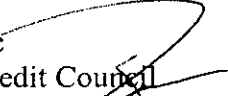
The amount of risk and damage that this bill allocates to a lender is simply unacceptable. The problem is inconvenience and delay to a potential home seller or buyer, not potentially huge monetary loss. **If this committee concludes the problem of delayed satisfactions is sufficiently serious, the solution is to require mortgagees to satisfy mortgages on a timely basis and to impose liability on the tardy mortgagee for money damages and reasonable attorneys fees. This is the approach that has been taken by North Dakota to address tardy releases of financing statements in N.D.C.C. section 41-09-43. The law should put the onus and risk on the person who is causing the problem, not on other mortgage lenders.**

We respectfully urge you to recommend a DO NOT PASS to SB 2223. Please feel free to contact any of us if you have questions about this.


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