

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2343

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2343

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2343**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 31, 2007**

Recorder Job Number: **2408**

Committee Clerk Signature



Minutes:

Tom Boyce – Executive VP, Centex Homes -In Favor

TESTIMONY #1

What the bill says that you can get the information you need if you're going to build on land.

S Klein: So what you're saying is that if someone from out of state who owns some property, he currently can't...

T Boyce: They have to register which is a process, somewhat difficult, but because we don't have many buyers, they just don't register. Only 20 subdivisions registered in ND right now.

This way they wouldn't have to do that, if someone asked for information, they can send it. But you KNOW there is a building going on there. Real land instead of pretend land [swamp].

Doreen Redman – ND Association of Bldrs - In Favor

Government affairs reviewed it, completely agrees with it and comes at request of high-production home builders council. One of 17 states that has this still in place, trying to get set up in the internet.

S Klein: We don't have a problem, we just are fixing things to address a glitch in ND?

D Redman: Exactly We don't have a problem, not to my knowledge.

Claus Lemke – ND Association of Realtors - *In Favor*

We have no objection to this bill. It fits in today's economy and market.

S Klein: Would this help people from out of state?

C Lemke: It would show subdivisions. They know that actual property exists when there is a registered subdivision. They actually send someone to view the land. If there is a house on the land, we know there is water, sewer, the structure, we know it's there.

S Klein: So this eliminates the visit.

C Lemke: That's correct.

S Behm: This is a very good idea.

C Lemke: Yes I know one boy bought swampland and it just so happened to be located right next to Disneyworld once they opened.

S Wanzek: Now days even swampland is also valuable for hunting.

F? O? N?

CLOSED

MOTION DO PASS S Wanzek

SECOND by S Behm

VOTE: 6 – 0 – 1 Passed

Carrier: S Heitkamp

REPORT OF STANDING COMMITTEE

SB 2343: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2343 was placed on the Eleventh order on the calendar.

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2343

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2343**

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 March 2007**

Recorder Job Number: **4377**

Committee Clerk Signature	<i>Jan Prindle</i>
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Minutes:

Chairman Kaiser opened the hearing of SB 2343.

Bill Delmore, representing the National Home Builders, testified in favor of the bill.

(Testimony Attached (1 & 2)).

Chairman Kaiser: If we have a plat of the land, we have a building on it; I have a section I want to develop.

Delmore: You have to have built it in an enforceable manner. It has to be a building as part of a development project or an enforceable contract—contracts to build within the next two-year period. Then you can provide information to North Dakotans.

Chairman Kaiser: Does that require platting?

Delmore: I think every state requires platting. You can't just plat it; you need to have a contract as well. If someone chose to be dishonest they could sell to their friend, build a couple of homes, but then all they can do is provide you information. They aren't selling it you.

Chairman Kaiser: What is it at right now? What do I need to do before . . . ?

Delmore: Let's say you go to Florida and see some land or you see some information but you are busy on vacation or business and you call to get information. Right now that developer cannot send you information unless you fill out a detailed affidavit requesting it or unless they have registered that particular subdivision with ND. There are only 20 subdivisions that are

currently registered. They are not likely registered because we don't have the amount of buyers to put the time and effort in to registering our state. It was directly to stop the old Florida swampland deals.

Dosch: Does this also include outside of the continental US? Such as Cancun?

Delmore: My understanding is that is within the continental US. One reason why I say that is I have representatives who have bought in Mexico and there are other steps you have to go through, but this would not apply and that's why it's a federal exemption. They would not be able to provide any information.

Chairman Kaiser: This doesn't apply to the land I own here, or does it? It applies to land being developed outside of Sate of ND that they want to market within the state.

Delmore: That's exactly right. What could apply though is if the state had the same exemption and somebody here, which hopefully we will see more and more, wanted to buy land were able to provide that information to builders here to whoever happens to be the resident of that particular state. There have been 30 states that have adopted. I'm not aware of any that have rejected federal exemption.

Chairman Kaiser: Is there any chance that this is going to create an opportunity like the swamp land property? Are we setting ourselves up here?

Delmore: I don't think so. The national homebuilders are doing it just to be able to provide information so they work in a more cohesive manner. Let's talk about Florida. I think it's an opportunity to invest in that area that we do not have. It's a good investment. Personally, I'd like to get information about some that but as it currently exists, I cannot. To be honest, dishonest people can find ways to use anything.

Representative Zaiser: Correct me if I'm wrong, but this bill goes both ways. In other words it works for North Dakotans if we're interested in buy property in some other state as well as it works for North Dakotans who have property they would like to sell to non-North Dakotans.

Delmore: Actually, this would work so North Dakotans can get information the other state has to have this exemption for them to get information from us regarding land that we may have.

Representative Zaiser: I'm assuming that states that do not have this exemption are not able to get information from ND nor any other state.

Delmore: Let's say Florida has an exemption. They can get information from us, but we cannot get information from them.

Representative Kasper: Where is the land located that this bill applies to?

Delmore: Any where in the US.

Chairman Kaiser: How does it work in magazines? There are these wonderful developments going on in FL or wherever and they're marketing them.

Delmore: They are not supposed to be able to send information to a state until we have this particular exemption. They either have to have an affidavit or they have to show that they have registered the subdivision.

Representative Boe: This affidavit is supposed to be held by the outfit that's going to be sending me the information.

Delmore: You have to fill the affidavit out saying you want the information.

Representative Zaiser: I was in Florida about 5 – 6 years ago just driving around and not with any real interest in buying any property and I came across a place that seemed interesting. I went in and they gave me a bunch of brochures and did everything to sell me the property. Where they then selling me that property—where is the line?

Delmore: They could do that because you were in their jurisdiction. What they couldn't do is unless you filled out the affidavit or signed something there, they couldn't send you more information back here.

Representative Ruby: Who do they need to register the affidavit with? If a developer wants to register with this state, what entity do they do that with?

Delmore: They have to have it in their file. What's make an affidavit unique is it has to be notarized. Unless they have a notary right there it isn't meeting the requirement. They register with the Real Estate Commissioner. Generic information is okay to distribute, but when they sell directly to you it becomes a problem. One of the benefits of this exemption and the communication is better information.

Vice Chairman Johnson: If I want to purchase some land in FL, I would need to fill out the affidavit so they can send me information, they keep the affidavit in a file, and they submit it to some organization. How do we know if they are default?

Delmore: The current statute we have is so difficult to enforce so the only people it's restricting right now are those that actually follow the law.

Representative Vigesaa: If I call a real estate company in MN and ask for information on a property they have advertised, they can't do it right now?

Delmore: The smart money says they are going to send it you but under the statute they are not supposed to.

Doreen Redman, representing the ND Association of Builders, testified in favor of the bill. We looked at this really closely and asked how it benefits builders and developers in ND and it doesn't. It benefits ND consumers because they can now get information from other states. There are 17 states along with ND that have this law in place that says you can't send information to us. We want to break down those barriers to allow North Dakotans to get the information they desire. We have been trying to get this law changed all across the country. We are one of the 17 left to change.

Representative Amerman: Representative Dietrich is a realtor in Grand Forks and if there are people in East Grand Forks want him to sell a property unless this is passed he can't do that.

Redman: I think the real estate commissioner would be a better person to answer that.

Claus Lembke, representing the ND Assn of Realtors, testified that his organization

doesn't have any problem with this bill. The current bill applies to property of five parcels or more. Anything above that would have to be registered with the ND Real Estate Commission in order to market it in ND. I know the commission has shipped people to a site before they were able to register so you could be assured that the land was actually there. For that reason that act was created and the two exceptions they are asking for is guarantee that the property is build able or an existing property.

Chairman Kaiser closed the hearing on SB 2343 and asked the wishes of the committee.

Vice Chairman Johnson: I move Do Pass.

Representative Clarke: I second.

A roll call vote was taken: Yes: 14, No: 0, Absent: 0

Representative Gruchalla will carry the bill.

Date: 3507
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2313

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Johnson Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Gruchalla

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

REPORT OF STANDING COMMITTEE

SB 2343: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2343 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2343

TESTIMONY IN SUPPORT OF
SENATE BILL 2343
INDUSTRY, BUSINESS & LABOR COMMITTEE
JANUARY 31, 2007

Good afternoon Mr. Chairman and members of the Committee. I am Tom Boyce. I am Executive Vice President, East Central Region, for Centex Homes, one of the nation's leading producers of new homes.

I apologize that I am unable to attend this hearing in person and respectfully request that my testimony be submitted for the record.

Thank you for considering legislation to improve consumer access to information regarding housing subdivisions in other states. This legislation, S 2343, is a welcome development in our efforts to eliminate barriers to consumer information about our properties while preserving strong consumer protection safeguards.

Imagine a scenario in which a North Dakota resident visits family in Minnesota or Illinois or Florida over the holidays. While there they take the opportunity to walk through a new housing development. When they return home and call back to the developer as a follow-up they learn that the developer is prohibited by North Dakota law from providing them any information until they complete and return a signed affidavit verifying that they (the consumer) initiated the request.

Unfortunately, this is not fanciful. It is the law and that is why we are respectfully requesting enactment of this legislation.

The amendment we seek is identical to that which is contained in the federal law and in the laws of most other states.

In 1971 North Dakota adopted Chapter 43.23.1-23. This law, known as the "Subdivided Lands Disposition Act," empowers the Real Estate Commission to prohibit the marketing and sale of unregistered out-of-state housing subdivisions to North Dakota residents. The purpose of the statute was to protect against fraud and abuse in residential lands sales primarily for the sale of vacant unimproved land.

When the Congress first addressed the issue in 1968, it too required registration of subdivisions. The federal statute is the "Interstate Land Sales Act Public Law 90-448; 82 Stat. 590; 15 USC 1701 et seq.

The federal law provides a very important and narrow exemption as follows:

"Section 1403 (a) (2) The sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;

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2343

Thirty states have adopted this federal exemption or language that is substantially the same as this exemption.

Only 17 states, including North Dakota, continue to make gathering information about out-of-state housing subdivisions difficult for the consumer. There were once 18 states without the exemption but Delaware completely eliminated its registration law in 2005 – without the involvement of the housing industry. The regulators and legislators in Delaware concluded – on their own - that the law was no longer needed and wiped it off the books.

The exemption embodied in S. 2343 recognizes that improved land (land with a building on it) or land subject to contracts requiring that a home be built within two years need not be subject to the registration requirements and corresponding marketing and sales restrictions.

In fact, making such subdivisions subject to registration is harmful to North Dakota citizens, in particular, because the number of prospective buyers from North Dakota is relatively small as compared to other states. In practical terms, that means that builders typically do not register subdivisions in North Dakota.

It is not a matter of expense, but simply one of priority and cost-effectiveness. This is demonstrated by the fact that, as of when we checked last, only 20 out-of-state subdivisions were registered in your state – a tiny fraction of the total that might be of interest to North Dakotans.

Therefore, because most subdivisions are not registered here, if a North Dakota resident wants information about a subdivision in another state – any other state – including your neighboring states – they must first submit a signed affidavit to the builder confirming that they initiated the contact with the builder.

Most people are annoyed -- at least -- about that requirement. When the internet and email afford consumers access to a massive amount of information, they just do not understand why they cannot be sent something as basic as a brochure.

Clearly, given consumer's high expectations regarding access to information, this vestige of the 1960's has certainly out-lived its usefulness.

Finally, since I mentioned Minnesota, I should point out that Minnesota and South Dakota are also restricted states. We hope that North Dakota will lead the way in this region and it is our intention to work in these and other states next year to secure adoption of the same amendment you are considering today.

Once again, thank you for your consideration.

Respectfully.

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2343

15 § 1701

Note 7

ston, Easton, Pa., C.A.3 (Pa.) 1978, 584 F.2d 1288.

For purposes of Interstate Land Sales Act, "indirect seller" is one who conducts selling efforts through means other than direct, face-to-face contact with buyers. *Gibbes v. Rose Hill Plantation Development Co.*, D.S.C.1992, 794 F.Supp. 1327.

8. Interstate commerce

In view of fact that at least 75,000 non-residents saw advertisements for one of two subdivisions, it could not be said as a matter of law that subdivisions were exempt, on ground that offerings of lots therein were entirely or almost entirely intrastate, from provisions of this chapter, though actual sales to nonresidents amounted to only 3 percent of purchasers in one subdivision and 1.5 percent of purchasers in other subdivision. *Happy Inv. Group v. Lakeworld Properties, Inc.*, N.D.Cal.1975, 396 F.Supp. 175.

9. Purchaser

Word "purchasers" within provisions of this chapter establishing rigorous disclosure provisions and requirements for vendors vis-a-vis purchasers, does not extend to assignees of purchasers. *Konopisos v. Phillips*, N.C.App.1976, 226 S.E.2d 522, 30 N.C.App. 209.

10. Subdivision

Development was a "subdivision" within meaning of the Interstate Land Sales Full Disclosure Act where lots were extensively advertised as a common unit

COMMERCE AND TRADE

and by use of common names. *Himmer v. Cost Control Marketing and Sales Management of Virginia, Inc.*, W.D.Va.1990, 757 F.Supp. 698.

11. Lot

Unit interest in hotel purchased by investor was not a "lot," as required, before investor could maintain action against promoters under Interstate Land Sales Disclosure Act; for interest to qualify as "lot" investor must have exclusive use of unit, and under terms of agreement investor could occupy unit in which he had invested for only a maximum of 14 days a year, and then only if unit was not being occupied by member of public. *Hecherer v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, E.D.Mich.1996, 920 F.Supp. 1345.

A condominium unit is a "lot" within meaning of Interstate Land Sales Full Disclosure Act; disagreeing with *Winter v. Hollingsworth Properties Inc.*, 587 F.Supp. 1289. *Schatz v. Jockey Club Phase III, Ltd.*, S.D.Fla.1983, 604 F.Supp. 537.

12. Sale

Both language of limitations provision and intent of this chapter are implemented rationally by interpreting "sale" to include not only signing of agreement but also all steps implementing agreement up to and including delivery of deed. *Haddad v. Deltona Corp.*, D.C.N.J.1987, 535 F.Supp. 1364, affirmed 725 F.2d 688.

§ 1702. Exemptions

(a) Sale or lease of lots generally

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

- (1) the sale or lease of lots in a subdivision containing less than twenty-five lots;
- ✕ (2) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;
- (3) the sale of evidence of indebtedness secured by a mortgage or deed of trust on real estate;

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2343

TESTIMONY IN SUPPORT OF
SENATE BILL 2343
HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
MARCH 5, 2007

WILLIAM J DELMORE
Lobbyist #438
Representing National Home Builders

1. Currently a builder or developer from another state cannot provide information regarding land to a person in North Dakota unless that builder or developer has registered the subdivision in North Dakota or the North Dakotan requiring information signs an Affidavit requesting the information.
2. Under this Bill a builder or developer may provide the information to a North Dakotan requesting such information if a building has been built on the land or the seller has entered a contract to erect a building within a period two years.
3. This Legislation is exactly the same as the Federal Exemption regarding the same subject.
4. Currently only 20 subdivisions are registered in North Dakota because we have a potential for fewer buyers and don't warrant the time and effort from the developers.
5. The original restriction was put in place to prevent the sale of "Florida swampland". This exemption provides that the land must be developable prior to the information being provided to North Dakota residents.
6. The North Dakota Realtors and builders have supported Senate Bill 2343

2

TESTIMONY IN SUPPORT OF
SENATE BILL 2343
HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
MARCH 5, 2007

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The exemption embodied in S. 2343 recognizes that improved land (land with a building on it) or land subject to contracts requiring that a home be built within two years need not be subject to the registration requirements and corresponding marketing and sales restrictions.

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Respectfully.