

2009 SENATE JUDICIARY

SB 2232

2009 SENATE STANDING COMMITTEE MINUTES

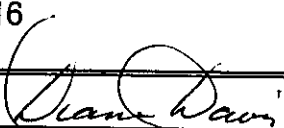
Bill/Resolution No. 2232

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8016

Committee Clerk Signature 

Minutes: **Senator D. Nething, Chairman**

Relating to general and summary execution of judgment, relating to execution of judgment.

Malcom Brown – See written testimony. – He requests language be condensed.

Committee goes through the bill line by line to see where the changes need to made.

Senator Schneider – Asks how often does a judgment creditor sits on a property rather than proceeding to the sheriff sale.

Brown – He says he cannot sight a specific case but has heard of some.

Senator Lyson – Asks about the negotiations.

Brown – Mortgage foreclosures are priority. If there is a second, third, fourth, the first and second are negotiating or with the debtor their priority doesn't change, if the fourth comes and says let's have a sale, that may enhance the process of the negotiations.

Senator Lyson – Stated he wouldn't want to be the sheriff standing between them.

Brown – This is simply to enable a lower end priority judgment creditor to schedule a sheriff's sale, the first mortgage would be paid and there would be something left for other creditors.

This will give them the ability to push that process.

Senator Fiebiger – Asks if this is designed to force people who have one of the superior liens to do something so they can't just sit and everybody has to wait.

Brown – Said that is correct.

Greg Tschider – Mid America Credit Union Association. Speaks in support of this bill if the proposed amendment is adopted. They were concerned with the agency aspect, how they would verify who the agent is going to be. He said if they were to release the money to a supposed agent and it was not the real agent then who pays.

Rick Clayburgh – President of ND Bankers Association – in support of this bill with the amendment. It would like to see an additional amendment that says execution served by a licensed ND attorney. His concern is if the money is wrongly released who is liable.

The committee discusses where they would put that language in the bill.

Don Forsberg – Independent Community Banks of ND – They have support for the bill with the amendments.

Howard Malloy – ND Land and Title Association – In support of this bill.

Closed the hearing on 2232

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2232

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/2/09

Recorder Job Number: 8364 forward to 35:32

Committee Clerk Signature

Diane Davis

Minutes: **Senator D. Nething, Chairman**

Committee work

Execution of judgment.

Senator Olafson motions do pass on the amendments

Senator Fiebiger seconds

Verbal vote- all yea

Senator Schneider moves do pass as amended

Senator Fiebiger seconds

Vote 6-0

Senator Lyson will carry

REPORT OF STANDING COMMITTEE

SB 2232: Judiciary Committee (Sen. Nething, 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 3, line 10, replace the first "the" with "an", after "attorney" insert "licensed to practice law in this state", and remove ", or an agent of"

Page 3, line 11, remove "either,"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2232

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2232

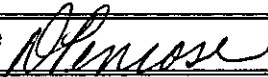
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10687, 10693

Committee Clerk Signature



Minutes:

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

Malcolm Brown, Real Property Section of State Bar Association: Support (attachment).

Rep. Delmore: On Section 9, is there a change on page 5, line 3, the same judgment orders the judgment debtor to pay any costs...are we pushing all these costs onto the debtor now, if we are that is a significant change to the party getting sued if judgment was granted.

Malcolm Brown: What line.

Rep. Delmore: Line 3, where it talks about the debtor to pay any costs, etc.

Malcolm Brown: No, the language means the same thing; we just tightened up the language to make it easier to understand than what had been in the law.

Rep. Delmore: A party, against whom the judgment was rendered, doesn't necessarily have to be the debtor does it.

Malcolm Brown: Yes, in the context of this judgment, it would be the judgment debtor, the person who owes the money. I can't see that it would be a third party. In any event, there is no intention to increase any costs that would not today be collected as part of the judgment.

This is striking out four words and substituting one word.

Rep. Delmore: The party against whom the judgment was rendered is really clear to me; just substituting it for debtor doesn't seem to make sense... couldn't it be someone else besides the debtor.

Malcolm Brown: No, it's the judgment debtor. The judgment debtor is the same as the party against whom the judgment was rendered. Again, the defendant is the judgment debtor and the person against whom the judgment was rendered.

Rep. Koppelman: This only deals with real property, or does this deal with garnishments, etc.

Malcolm Brown: Execution of judgments can be real and personal property.

Rep. Koppelman: So this section isn't strictly dealing with real property.

Malcolm Brown: No.

Rep. Koppelman: I see in section 6 where you talk about in your testimony that the language means what sections 4 and 5 meant. It's not quite identical, are there any substantive changes.

Malcolm Brown: There was new language and this is the section that was amended in the Senate, starting on line 9, the execution may be served by an attorney licensed to practice law in this state for the judgment creditor or a sheriff. In other words, adding an attorney licensed to practice law in the state could also serve the execution just the same as the sheriff.

Rep. Koppelman: Could you elaborate on the reason for that being necessary.

Malcolm Brown: I don't know, it came up in discussions from a law firm that does a lot of collection work, and it was his attempt to simplify the process of how they collect on judgments.

Rep. Koppelman: How would that work from a practical standpoint? Now you send the sheriff out to serve someone or try to collect property. How is the attorney going to do that?

Malcolm Brown: I would expect that it would be more efficient and cost effective from the collector's point of view. They might be able to do things quicker.

Rep. Koppelman: And not charge as much.

Malcolm Brown: In my experience, the only time I really used a sheriff was in an eviction. They have a lot of work to do. Typically, these things will be down on the list of things they have to do. They have more important things to do, and so sometimes these are on their desk for a long time. Allowing the executions to be handled by the attorney will enable it to get done faster.

Rep. Koppelman: So in the past, this has sort of been a law enforcement function in a way. So now we're broadening this to the attorney to do the same thing. Why limit it to just attorneys. Aren't there others who could do execution work.

Malcolm Brown: The language was pretty broad when it was first looked at, and it included an agent for its judgment creditor. That was removed at the suggestion of the ND Bankers Association, and they put in an attorney who was licensed to practice law in ND. They would have accountability for the case to be processed correctly.

Rep. Koppelman: If the process were to be abused, any citizen would be subject to personal responsibility with regard to the laws. I realize that with an attorney they have the State Bar where you could go and sanctions are available against the attorneys.

Malcolm Brown: I think the control that the attorney involved in the process would be greater than control for a layperson involved in the collection process.

Rep. Delmore: On page 2, section 4, it says that real property must be sold in the county in which it is located. Is that true now, as well.

Malcolm Brown: Yes.

Rep. Delmore: Can you tell me why that is.

Malcolm Brown: If you have a sale and obviously you want to attract bidders to the sale, and there are laws, particularly in sales of real estate, where you have several parcels that might be mortgaged, and the judgment debtor has the opportunity to designate what parcels are sold, etc. I suspect that, historically, the reason is to give the judgment creditor an opportunity to get their money and still leave something for the debtor.

Rep. Klemin: Isn't it also the sheriff of that county that is doing the sale.

Malcolm Brown: Yes, for the reasons that I've explained.

Rep. Boehning: You can do a sheriff's sale for garnishment, now can the attorney do the sale.

Malcolm Brown: Usually a garnishment is not against real estate. Garnishment could be against funds held by a bank account, funds held by a trustee, etc. A personal property item typically is money. So for section 6, on page 3, the attorney serving the execution would simply be serving it on the bank. There wouldn't be a sheriff involved, nor is he involved in a typical garnishment.

Rep. Boehning: If you owe money to credit card companies, they can't take personal property to satisfy the garnishment.

Malcolm Brown: A creditor, before he can collect, must have a judgment. Then they can execute and levy on real estate, personal property, garnishment wages or money in a bank account like we talked about. In each of those cases, the debtor has certain exemptions which are under sections in the century code. Most debtors have more exemptions than assets.

Rep. Kretschmar: I'm looking at section 1 of the bill, it talks about the judgment creditor and the mortgage foreclosure, is that the bank that has the mortgage on the house.

Malcolm Brown: Yes.

Rep. Kretschmar: Then someone with a 2nd or a 3rd judgment mortgage could come in and have sale the done, would the 1st mortgagee, the bank, would they lose rights or would they still be in a position to get that money.

Malcolm Brown: The 1st lien holder does not lose any rights, except that they would get paid off, then the remaining funds would go to the next lien holder in line, etc. I had a situation recently where the 1st mortgage holder didn't want to sell the building, because they were getting pretty good rental income coming in and they thought that would give them more return on their recovery, than if they sold it. So they stopped the other lien holders from being able to sell it. Ultimately it got worked out, but this is a method whereby the subsequent lien holders could have the sheriff sale as part of the mortgage foreclosure.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2232.

Rep. Koppelman: The only thing that was amended in the bill, page 3, section 6, they clarified that an attorney licensed in this state; then they took out "or agent of the creditor". My question is, if we are broadening this in terms of people who can execute these judgments, beyond law enforcement and/or a sheriff, we can understand that, to other people, should it be just attorneys, or why not have another agent of the creditor. Is there a reason for that.

Rep. Klemin: There are people know as process servers.

Rep. Koppelman: Right.

Rep. Klemin: They can do that, and that would come under the third party servers, personal service.

Rep. Koppelman: But before that it says that the execution may be served by an attorney, licensed to practice law in this state, for the judgment creditor or a sheriff, through certified mail, or personal service. It implies to me that only those two types of people can do it. A

process server, as you point out, I could use regularly for other kinds of service. Why wouldn't an agent work. It sounds like one person had an objection.

Rep. Klemin: A process server cannot take the funds, whereas a sheriff could.

Chairman DeKrey: We will appoint a subcommittee of Rep. Klemin, Rep. Delmore, and Rep. Koppelman.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2232

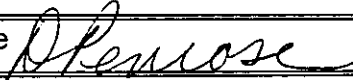
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11138

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take up SB 2232.

Rep. Klemin: The proposed amendment isn't in quite the right format (attached). All we're doing is rephrasing, there aren't any substantive changes. It's clearer as to how service is done by a sheriff or an attorney. I move the amendments.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Dahl: I move a Do Pass as amended.

Rep. Wolf: Second.

11 YES 1 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

VR
3/18/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2232

Page 3, line 10, after "served" insert "personally upon the third party by a sheriff, or may be served" and replace "for the judgment" with "by"

Page 3, line 11, remove "creditor or a sheriff through", after "mail" insert "to the third party, return receipt requested,", after the second "or" insert "by", and replace "to" with "upon"

Renumber accordingly

Date: 3/17/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2232

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Dahl Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 11 (No) 1 (Absent) 1

Floor Carrier: Rep. Guffin

Vote is 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** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2232 was placed on the Sixth order on the calendar.

Page 3, line 10, after "served" insert "personally upon the third party by a sheriff, or may be served" and replace "for the judgment" with "by"

Page 3, line 11, remove "creditor or a sheriff through", after "mail" insert "to the third party, return receipt requested,", after the second "or" insert "by", and replace "to" with "upon"

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2232

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2232

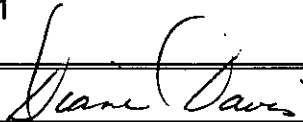
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 12001

Committee Clerk Signature



Minutes:

Senator Lyson, Chairman

Representative Klemin

Senator Olafson

Representative Kretschmar

Senator Fiebiger

Representative Griffin

Senator Lyson asks Representative Klemin to explain the House amendments. Rep. Klemin said they made a language change so it reads better. Senator Lyson said the sheriff needs to be able to serve by certified mail. He said it is very important to keep that in the bill. Senator Fiebiger asks if it should read attorney or sheriff can serve by certified mail. Senator Lyson said he thought it should only be the sheriff because the sheriff has already started his action. Rep. Klemin asks if the attorney shouldn't be included. Senator Lyson said it probably doesn't matter but more than likely it still would be the sheriff. The committee discusses the way the language reads and feels it is a little awkward. Senator Olafson mentions the purpose to use certified mail is to get a receipt. He wonders if they can't word it so that by using certified mail it could be an attorney or sheriff. Rep. Klemin suggests the language to read, the execution may be served personally or by certified mail upon the third party by a sheriff or by an attorney

licensed to practice law in this state. Rep. Griffin suggests instead of using personally they should use personal service. The committee agrees with the language changes.

Representative Klemin motions the House recede from House amendments and amend as follows. (see amendment) Senator Olafson seconds.

Roll call vote – 6 yes, 0 no

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2232

That the House recede from its amendments as printed on page 952 of the Senate Journal and page 1011 the House Journal and that Senate Bill No. 2232 be amended as follows:

Page 3, line 10, after "by" insert "personal service or by certified mail upon the third party by a sheriff or by" and remove "for the judgment"

Page 3, line 11, remove "creditor or a sheriff through certified mail or personal service to the third party"

Renumber accordingly

Date: 4/20/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB2232** as (re) engrossed

Senate Judiciary Committee

Check here for Conference Committee

- Action Taken SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 952 --

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Rep Klemin Seconded By Sen Olafson

Senators				Representatives			
	Attend	Y	N		Attend	Y	N
		e	o			e	o
		s				s	
Senator Lyson-Chair	X	X		Rep. Klemin	X	X	
Senator Olafson	X	X		Rep. Kretschmar	X	X	
Senator Fiebiger	X	X		Rep. Griffin	X	X	

Vote Count 6 Yes 0 No _____ Absent

Senate Carrier Sen. Fiebiger House Carrier Rep.

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2232, as engrossed: Your conference committee (Sens. Lyson, Olafson, Fiebiger and Reps. Klemin, Kretschmar, Griffin) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 952, adopt amendments as follows, and place SB 2232 on the Seventh order:

That the House recede from its amendments as printed on page 952 of the Senate Journal and page 1011 the House Journal and that Senate Bill No. 2232 be amended as follows:

Page 3, line 10, after "by" insert "personal service or by certified mail upon the third party by a sheriff or by" and remove "for the judgment"

Page 3, line 11, remove "creditor or a sheriff through certified mail or personal service to the third party"

Renumber accordingly

Engrossed SB 2232 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2232 .

Same given to House.

Testimony of Malcolm H. Brown in support of SB 2232

My name is Malcolm H. Brown. I am an attorney appearing on behalf of the Real Property Section of the State Bar Association of North Dakota. This bill was drafted and introduced by Senator Holmberg at the request of our Section.

Much of this bill is editing by our Section to make the reading of the laws relating to executions somewhat simpler. There are a few substantive changes. The first of these is in Section 1 of SB 2232 wherein § 28-21-01, of the Century Code is amended to provide that if a judgment creditor in a mortgage foreclosure does not proceed with a sheriff's sale of the property, an inferior lienholder may obtain an execution and arrange for the sheriff's sale. This is designed to eliminate the mortgage holder from sitting on the property, perhaps collecting rents, and then would permit other creditors to sell the property and perhaps realize some equity that might be in the property.

Section 5 of the bill creates new language with regard to judgments that require the performance of an act, and obedience to that act may be enforced by the service of a certified copy of the judgment on the party against whom it is given or the person who is required to obey the same. A type of judgment that comes to mind is an eviction judgment when the tenant has not moved out of the property after the eviction proceeding.

The language taken out of § 28-21-04.1 regarding execution on garnishments is now in Section 6 of the bill creating a new § 28-21-04.2. Sections 7, 8 and 9 simplifies the language regarding how executions are docketed and what their contents are. The remainder of the bill, Sections 10 through 17 is the result of editing by our Section to simplify the language.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2232

3

Page ~~8~~, lines 9 to 11, remove "The execution may be served by an attorney licensed to practice law in this state for the judgment creditor or a sheriff through certified mail or personal service to the third party." and insert "The execution may be personally served upon the third party by a sheriff, or may be served by an attorney licensed to practice law in this state by certified mail to the third party, return receipt requested, or by personal service upon the third party."

Renumber accordingly