

2009 SENATE JUDICIARY

SB 2233

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2233

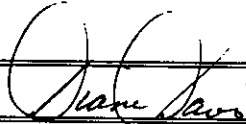
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7733

Committee Clerk Signature



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

Relating to recording of change of name or identity of mortgagee and the assignment, satisfaction, release, or authorization of foreclosure by a mortgagee and do provide for retroactive application.

Malcolm Brown – See written testimony. Would like the proposed amendment passed as well.

Senator Nelson – Asks if this solves where people could find their mortgage.

Brown – Probably not, but would find out who satisfied.

Senator Nething - This will remedy the situation when it comes time to satisfy that mortgage.

Brown- Said yes this is what it is designed to do. The whole idea is that you can get the document to show the world it is satisfied.

Senator Fiebiger – Ask if this is just cleanup language to make things more efficient. Asks if it a long process when there is a problem.

Brown – Not sure, doesn't know how often but says it has happened.

Closed the hearing

Senator Lyson moves the amendments, second Senator Fiebiger

Verbal yes vote pass

Senator Lyson moves do pass as amended

Senator Fiebiger seconds

Vote – 6-0

Senator Nething will carry

Date: 11/26-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB 2253
amendment

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Lyson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	/		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	/		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	/		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment _____

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

Verbal all yes on the amendment

Date: 1-26-09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB 2233

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Lyson Seconded By Sen Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Nething

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

Amendment

REPORT OF STANDING COMMITTEE

SB 2233: 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 2233 was placed on the Sixth order on the calendar.

Page 1, line 22, after the second underscored comma insert "or" and remove ", or power of attorney to foreclose"

Page 1, line 23, after the second underscored comma insert "or"

Page 1, line 24, remove ", or authorize the foreclosure of"

Page 2, line 3, after the second underscored comma insert "or" and remove ", or power of"

Page 2, line 4, remove "attorney to foreclose the mortgage"

Page 2, line 6, after the second underscored comma insert "or" and remove ", or power of attorney to foreclose"

Page 2, line 8, remove "and registrar of titles"

Page 2, line 9, after the first underscored comma insert "or" and remove ", or power of attorney to foreclose"

Page 2, line 10, after the first underscored comma insert "or" and remove ", or foreclose"

Page 2, line 11, remove the first underscored comma, after the third underscored comma insert "or", and remove ", or power"

Page 2, line 12, remove "of attorney to foreclose"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2233

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2233

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10688, 10694

Committee Clerk Signature

Delmore

Minutes:

Ch. DeKrey: We will open the hearing on SB 2233.

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

Rep. Delmore: Will this simplify finding out who owns the mortgage.

Malcolm Brown: Not if it weren't of record, recorded in the county recorder's office. It would not help.

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 2233.

Rep. Delmore: I move a Do Pass.

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 3/11/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2233

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. Delmore 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) 12 (No) 0 (Absent) 1

Floor Carrier: Rep. Dahl

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2233, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2233 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2233

Testimony of Malcolm H. Brown in support of SB 2233

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. The purpose of this bill is to address the issue of mergers of financial institution and assignments of mortgages where a document that memorializes the merger or assignment is not placed of record in the office of the County Recorder. In this day of multiple assignments, mergers of banks and other financial institutions, a document that could identify that occurrence is rarely filed for record. Thus a title examiner is unable to "connect the dots" in order to determine that a mortgage has in fact been release, satisfied or assigned. For your information as to how these events appear to a title examiner, I am attaching a series of entries from an abstract that illustrates;

Entry #178: a mortgage to Norwest Bank;

Entry # 179: an assignment of same to Norwest Mortgage;

Entry #180: a satisfaction of the mortgage by GMAC;

No connection between Norwest Mortgage and GMAC appears of record. However the mortgage referred to at #178 is referenced by Document # in the satisfaction at #180.

If the assignment, satisfaction or release recites that the entity that executes the document is the assignee, or holder by merger etc., and the document identifies the instrument in question (as #180 above does), the document would be sufficient to enable the County Recorder to record it and a title examiner to rely on it.

The second part of the bill would permit a title examiner to rely on the statements contained here even if the documents in question were recorded prior to the effective date of this law. Due to some errors in the drafting process, the term "power of attorney to foreclose" language was placed in the bill. However here in North Dakota it is not necessary to have such a document nor to record it. I have drafted an amendment to that portion of the bill eliminating that term that I would present to your Clerk in the event you determine to give this bill a "Do-pass". Thank you.

No. 178

James E. Tyrakoski and Caroline J. Tyrakoski, husband and wife, 803 6th Avenue NE, Mandan, North Dakota

MORTGAGE
SHORT TERM MORTGAGE
REDEMPTION

*Same
handouts
given to Honor.*

To

Dated January 22, 1985
Filed Jan. 25, 1985 at 9:16 A.M.
Recorded as Doc. No. 288642
Ack. Jan. 22, 1985 before Bonnie J. Johnson, N.P. Burleigh County, ND (Seal)
Comm exp Aug. 25, 1989

Norwest Bank Bismarck, National Association, PO Box 1538, Bismarck, ND

Mortgages

Lot Two (2), Block Six (6), Diane's First Addition to the city of Mandan, Morton County, North Dakota

Secures the sum of \$32,900.00 and interest according to a certain promissory note, bearing even date herewith, for said principal sum, payable with interest thereon at the rate of 12% per annum on the unpaid balance until paid, in monthly installments of \$338.42 commencing on March 1, 1985 and on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on February 1, 2015***

Contains Default Clause

No. 179

Norwest Bank Bismarck, National Association, Bismarck, North Dakota, a corporation
by Thomas Gietzen, Its Ass't Vice President
Attest: Kenneth J. Roth, Its Consumer Loan Officer (Corp Seal)

ASSIGNMENT OF MORTGAGE

Dated January 22, 1985
Filed Jan. 25, 1985 at 9:18 A.M.
Recorded as Doc. No. 288643
Consideration \$32,900.00
Ack. Jan. 22, 1985 before Renee L. Daffinrud, N.P. Burleigh County, ND (Seal) Comm exp July 19, 1990

To

Norwest Mortgage, Inc., an Iowa corporation, PO Box 780, Waterloo, IA

Does hereby sell, assign, and transfer unto Assignee, its successors or assigns, a certain mortgage dated January 22, 1985 and recorded as Doc. No. 288642 covering

Lot Two (2), Block Six (6), Diane's First Addition to the city of Mandan, Morton County, North Dakota

THE MANDAN ASSURANCE COMPANY, CHICAGO
COUNTY OF BURLEIGH, MANDAN, ND

THE MANDAN TITLE COMPANY, Official Abstractors of Morton County, Mandan, ND

Lot 2, Block 6, Diane's First Addition to the City of Mandan, Morton County, North Dakota.

No. 180

SATISFACTION OF MORTGAGE, by
GMAC Mortgage Corporation, by Sheryl
McNally, Asst. Vice President

Dated August 31, 1999
Filed October 18, 1999 at 10:30 A.M.
Recorded as Doc. No. 358335

Satisfies the mortgage dated January 22, 1985, by James E. Tyrakoski and Caroline J. Tyrakoski,
recorded as Doc. No. 288642, covering:

Lot 2, Block 6, Diane's First Addition to the City of Mandan, Morton County, North Dakota.

Acknowledged August 31, 1999, by Sheryl McNally, Asst. Vice President, before Carol J. Chapman, Notary
Public, State of IA (Seal) Comm. expires December 8, 2000 (venue shows Black Hawk County, IA).

No. 181

Filed for record August 2, 1999 at 3:44 P.M., and recorded as Doc. No. 357135 is the following **NORTH
DAKOTA CERTIFICATE OF DEATH OF CAROLYN TYRAKOSKI.**

Date of Death: June 15, 1998
Place of Death: Bismarck, Burleigh County
Usual Residence: Mandan, Morton County, ND
Spouse: Jim Tyrakoski

Re: Lot 2, Block 6, Diane's First Addition to the City of Mandan, Morton County, North Dakota.

Attached to the foregoing is a certificate of Correct Transcript dated June 26, 1998 and signed by Debra
Simenson, Local Registrar of Vital Statistics (Clerk of District Court), Burleigh County, ND. Official Seal
affixed.

Proposed Amendments to Senate Bill No. 2233

Page 1, Line 21 to 24

Page 2, Line 1 to 13

Authority of mortgagee designated as nominee or agent - Retroactive application.

1. An assignment, satisfaction or release, or power of attorney to foreclose is entitled to be recorded in the office of the county recorder and is sufficient to assign, satisfy or release, or authorize the foreclosure of a mortgage if:
 - a. A mortgage is granted to a mortgagee as nominee or agent for a third party identified in the mortgage, and the third party's successors and assigns;
 - b. A subsequent assignment, satisfaction, or release of the mortgage, or power of attorney to foreclose the mortgage is executed by the mortgagee or the third party, its successors or assigns; and
 - c. The assignment, satisfaction, or release, or power of attorney to foreclose is in recordable form.
2. The county recorder and register of titles shall rely upon the recorded assignment, satisfaction or release, or power of attorney to foreclose in subsection 1 to assign, satisfy or release, or foreclose the mortgage.
3. This section applies to any mortgage, assignment, satisfaction, or release, or power of attorney to foreclose executed, recorded or filed before, on, or after August 1, 2009.

Testimony of Malcolm H. Brown in support of SB 2233

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. The purpose of this bill is to address the issue of mergers of financial institution and assignments of mortgages where a document that memorializes the merger or assignment is not placed of record in the office of the County Recorder. In this day of multiple assignments, mergers of banks and other financial institutions, a document that could identify that occurrence is rarely filed for record. Thus a title examiner is unable to “connect the dots” in order to determine that a mortgage has in fact been release, satisfied or assigned. For your information as to how these events appear to a title examiner, I am attaching a series of entries from an abstract that illustrates;

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