

2009 SENATE JUDICIARY

SB 2234

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2234

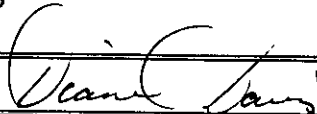
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7863

Committee Clerk Signature



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

Relating to recording instruments without acknowledgment

**Malcom Brown** – Has supplied written testimony, he cannot be here today.

**Senator Nething** called on John Olson to give a review of that testimony.

**John Olson** – He is appearing for Malcom Brown and reads through Brown's testimony.

See written testimony.

**Senator Olafson** – Remarks that we had a bill in the 2007 session which provided for a release of mortgage with not much documentation and the county recorder would obligated to accept that release. He asks if this provides for a release of mortgage without further documentation.

**Olson** – Responds no, the release pertains to a private lending institution and that would have to have the necessary acknowledgment unless the statute provides otherwise. He doesn't see anything relating to a document in this proposed bill.

**Senator Fiebiger** – Asks about section 3, suggests any instrument the attorney signs has to be accepted without further acknowledgement, he wonders about the "Lis Penden". He thinks the language is a little broad.

**Olson** – Agrees with Senator Fiebiger and said he will talk with Malcom Brown.

**Senator Nething** said he would leave the hearing open for Mr. Brown.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2234

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 2234

Committee Clerk Signature

*Dean Davis*

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

Committee work

This is a bill to simplify recorded documents.

Malcom Brown – Explained the bill to the committee, see written testimony. “Lis Pendens” notice to the world there is litigation.

Senator Fiebiger – Asks if there is any value to having “Lis Pendens” instead of instrument.

Brown – Said an attorney could file a construction lien on behalf of a client, that would be an instrument that could be filed.

Senator Schneider makes a motion of do pass, seconded by Senator Fiebiger.

Vote – 6-0

Senator Schneider will carry

Date: 1/28/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2234  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Schneider 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. Schneider

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

**REPORT OF STANDING COMMITTEE**

**SB 2234: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2234 was placed on the  
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2234

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2234

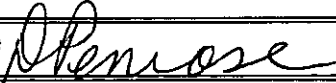
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10689

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2234.

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

**Rep. Klemin:** In subsection 3, with the attorney's signature, doesn't actually mention lis pendens, is that the only kind of instrument we are talking about.

**Malcolm Brown:** No, it could be other instruments. Lis pendens was the one that occurred to me that the county recorder required a notarization.

**Rep. Klemin:** Would it be appropriate to specifically mention Lis pendens as well as other kinds of instruments there might be.

**Malcolm Brown:** I think if we got specific, we might miss something, as opposed to saying an instrument signed by an attorney.

**Rep. Klemin:** That's what I was thinking, it would be something like "a lis pendens or other instrument".

**Malcolm Brown:** That would work.

**Rep. Klemin:** We have a separate chapter on lis pendens don't we.

**Malcolm Brown:** It's not a separate chapter. I think it appears in chapter 47.



**Rep. Klemin:** What if I have a letter, sign it, and have my State Bar Association ID number there, is that an instrument.

**Malcolm Brown:** I wouldn't consider it an instrument, but the Recorder might record it if it had a legal description on it. Another type of instrument that an attorney might sign and record would be a construction lien (n/k/a mechanic's lien) notice, and an attorney could sign that and have it recorded without an acknowledgement. Today those same instruments can be recorded with an acknowledgement. This bill would allow the attorney to sign them without an acknowledgement and be recorded. We're not changing any substantive law here.

**Rep. Delmore:** Is there a different charge for something that is recorded with an acknowledgement or without the acknowledgment.

**Malcolm Brown:** The County Recorder charges fees based on the number of pages and the number of tracts, \$10 for the first page, \$3 for each successive page.

**Rep. Klemin:** In subsection 4, an affidavit that bears an appropriate jurat. The reason I have that question is because the word "jurat", in my understanding, a jurat is liked "subscribed and sworn to before me \_\_ day of \_\_\_\_" and signed by a notary. A jurat is really verification or something like that, it's not an acknowledgement.

**Malcolm Brown:** That's correct. A jurat is sworn under oath.

**Rep. Klemin:** But I guess my question is, whether the word "jurat" is really the appropriate term to use there. I say that because I am on the drafting committee for the Uniform Law on Notarial Acts, and they are eliminating the word jurat from that Uniform act.

**Malcolm Brown:** If there is a better word, that would be fine.

**Rep. Klemin:** Maybe we could use the word jurat, but we should also use the alternative language, verification language, so that it's clear what a jurat is. I'm not so sure that a jurat is actually defined anyplace on code.

**Malcolm Brown:** I'm not sure either.

**Rep. Vig:** The language on 1 and 2. An Indian Tribe, recognized by the US Dept. of Interior, why is that in there.

**Malcolm Brown:** I'm not sure why it's in there, unless it's because Congress delegates a lot of authority to the Dept. of Interior for the Indian tribes.

**Rep. DeKrey:** When I was on the Tribal Relations Committee, I think it always says "or a tribe recognized by the US Dept" because I think there are tribes out there that claim their tribe hasn't been recognized by the US government. So their definition in code as a recognized tribe is in there, because the Federal government says it is a tribe. Thank you, Malcolm.

Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2234

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 11025

Committee Clerk Signature

*Stemrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2234.

**Rep. Klemin:** Explained the amendments. I move the amendments.

**Rep. Delmore:** Second.

**Chairman DeKrey:** Voice vote, motion carried.

**Rep. Zaiser:** I move a Do Pass as amended.

**Rep. Boehning:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Klemin**

VR  
3/16/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2234

Page 2, line 15, replace "An" with "A lis pendens or other"

Page 2, line 18, replace "an appropriate" with "a" and after "jurat" insert "or verification upon  
oath or affirmation"

Renumber accordingly

Date: 3/16/09

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. 2234**

**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. Zaiser      Seconded By Rep. Boehning

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) 13      (No) 0      (Absent) 0

Floor Carrier: Rep. Klemin

Vote is amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2234: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2234 was placed on the Sixth order on the calendar.

Page 2, line 15, replace "An" with "A lis pendens or other"

Page 2, line 18, replace "an appropriate" with "a" and after "jurat" insert "or verification upon oath or affirmation"

Renumber accordingly

2009 TESTIMONY

SB 2234

Testimony of Malcolm H. Brown in support of SB 2234

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 Senators Holmberg and Hogue at the request of our Section.

This bill is designed to simplify the section of the Century Code, 47-19-02, that deals with documents entitled to be recorded at the County Recorders office without an acknowledgment, or notarization. As you will note from the bill, current law sets forth several sections relating to government, State and Federal, documents that can be recorded. I believe all these sections are covered by Section 1 and 2 (lines 6-14, page2) of the bill.

Section 3 is new and relates to a document entitled "Lis Pendens" that is usually made of record in real estate litigation. "Lis Pendens" means pendency of litigation and is recorded to notify the world that litigation of some sort is pending regarding the real estate described therein. Our Section feels that an attorney should be able to sign such and have it recorded without an acknowledgment.

Section 4 covers the usual affidavits that are sometimes necessary in title matters. Section 5 would cover a financing statement, which are seldom notarized, and enable it to be recorded to cover an lien on fixtures that may be attached to real estate.



Section 6 would allow a plat to be recorded without an acknowledgment, but of course, would be signed by a registered land surveyor.

## Testimony of Malcolm H. Brown in support of SB 2234

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 is designed to simplify the section of the Century Code, 47-19-02, that deals with documents entitled to be recorded at the County Recorders office without an acknowledgment, or notarization. As you will note from the bill, current law sets forth several sections relating to government, State and Federal, documents that can be recorded. I believe all these sections are covered by Section 1 and 2 (lines 6-14, page2) of the bill.

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Section 4 covers the usual affidavits that are sometimes necessary in title matters. Section 5 would cover a financing statement, which are seldom notarized, and enable it to be recorded to cover an lien on fixtures that may be attached to real estate.

Section 6 would allow a plat to be recorded without an acknowledgment, if signed by a registered land surveyor.