

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2149

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2149  
January 18, 2011  
Job Number 12989

Conference Committee

Committee Clerk Signature

*En Litter*

## Explanation or reason for introduction of bill/resolution:

Relating to a prohibition on private transfer fee obligations.

## Minutes:

3 testimonies attached

**Chairman Senator Klein:** Opened the hearing.

**Senator Grindberg:** Said this would lower the cost of home purchase.

**Representative Louser:** Testimony Attached (1).

**Senator Laffen:** Asked for it to be defined what the transfer fee is.

**Representative Louser:** I will leave that to the others testifying.

**Daryl Braham, Owner and Broker of Prudential Premier Real Estate, President of the North Dakota Association of Realtors:** Testimony Attached (2).

**Senator Nodland:** There is a disclosure statement that has the fees disclosed in a transaction is this fee disclosed?

**Daryl:** Fee is added at closing, not when they are getting financed for that property it would be added at closing.

**Senator Nodland:** Is this only in the larger cities?

**Daryl:** This has picked up steam the last couple of years. States are just now passing similar bills into law. Some have had these become Constitutional amendments.

**Senator Andrist:** What do these fees run?

**Daryl:** Fixed dollar amounts to one percent of the sale amount.

Continued with questions for Daryl

**Senator Larsen:** Do they stand on the ground that that fee covers the infrastructure they put into the property or is that infrastructure suppose to be taken care of when the first person bys the property?

**Daryl:** There are a lot of questions about what that fee covers. In Fargo and Moorhead we have special assessments, where by the developers are funded through the City to do infrastructure and repairs and that can stay with the land and be transferred to homeowners but that is a fixed amount when they start based on the improvements that are done on the land. What we've seen in other states what the developers are doing is using this as opportunity to say they have excess costs that they cannot sell right now so they are going to package them through these future fees and we can't really tell what they are for. It's an income future income stream for the developers.

**Senator Larsen:** How long has this been in effect in North Dakota and how many developers are taking advantage of this?

**Daryl:** It is not in effect in North Dakota and we want to close the back door so it does not happen,

**Claus Lembke, North Dakota Realtors Association:** Talked about the bill and he showed map of the states that are making changes. He goes through the bill and answered questions that were asked earlier.

**Senator Nodland:** Does Minnesota have this?

**Claus:** Yes, it was patterned after other states legislation that has the transfer tax already.

**Marilyn Foss: North Dakota Banker Association:** In support. She stated that she would like to leave in the disclosure of any fees that might exist. She explains that they might be putting it into the contract just like they put into your deed the mineral interests. This has come as a realtor fee but an individual can also do this. This has not been something people would be looking for and it is a concern in housing finance. This will prohibit Fanny Mae from buying properties that have this in the contract. That is why the disclosure part is so critical. (Continues with her testimony).

**Doreen Riedman, North Dakota Association of Builders:** In favor of the bill. They did have questions and concerns with some of the fees.

**Dana Bohn:** Testimony Attached (3).

**Don Forsberg, Individual Community Bank of North Dakota:** In support of the bill. The membership finds that it is already difficult to make loans and that would impede the future sales of property.

**Chairman Senator Klein:** Closed the hearing.

**Senator Nodland:** Move a do pass.

**Senator Andrist:** Seconded the motion.

Roll Call Vote: Yes – 7 No – 0

Senator Nodland to carry the bill

Date: 1/18/2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2149

Senate Industry, Business and Labor Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Nodland Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

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

**REPORT OF STANDING COMMITTEE**

**SB 2149: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2149 was placed on the Eleventh order on the calendar.

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2149

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2149  
March 15, 2011  
15483

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Prohibition of private transfer fee obligations

## Minutes:

**Chairman Keiser:** Opens the hearing on SB 2149.

**Representative Scott Louser~Member of the North Dakota Realtors:** Introduces the bill. We are here in favor to opposing a private transfer fee for sale of real property. It's described in section 1 on the first page, what a transfer fee would and would not include. This legislation was based on research from across the country and the National Association of Realtors in other states. A couple of examples, when a borrower want to buy a property and they go to the lender, they get what is called a good faith estimate. Those estimates have been tighten dramatically by the federal government. The those estimates from the lender will include a fee that will incur to get a loan, an appraisals, title work, location inspection, and that sort of thing. Each one of those fees has a service attached to it. Some fees you may incur when you buy property are not disclosed by a lender but they are outside the home lending process, like home inspections, home warranties, that sort of thing. For each of those things listed, you get a service or product for the fee you are paying. A transfer fee would go back to the original developer and there would be no service at the time the fee is paid. Secondly, a developer who is doing some business planning or looking for reimbursement on a development could or would receive the fees for an indefinite amount of time, potentially beyond the ownership of the business, or maybe beyond their lifetime. It seems to be a poor way of planning for a development and business. It's been brought to my attention that large developments have had those rights sold at a discount. If you take into consideration the time where the properties in a subdivision may change hands a number of times and a neighbor never moves, that fee is being generated by the property that is turning hands and the person across the street that doesn't move, doesn't pay a fee. Again, would be an unfair practice and a poor use of fees for budgeting purposes.

**Chairman Keiser:** Further questions? Anyone else here to testify in support of SB 2149?

**Clause Lembke~Local Affairs Officer for the North Dakota Association of Realtors:** We ran it by the independent banks. Reads the bill changes. (See attachment 1). Reads the chart.



**Chairman Keiser:** How does private transfer fees versus commission and all these other allowable fees works?

**Clause Lembke:** A private transfer fee is usually built in the covenants. The covenants requires you to pay a certain flat fee or percentage fee every time the property transfers.

**Chairman Keiser:** The developer puts that into the covenant when they plan and create the project?

**Clause Lembke:** That correct.

**Chairman Keiser:** What we are saying is the date of this enactment, when it becomes effective, those will not be allowed even if they are in the covenants.

**Clause Lembke:** The existing ones will stay, but new ones cannot be.

**Chairman Keiser:** Even if they put it in a new project.

**Clause Lembke:** Null and void.

**Representative Frantsvog:** Who gets the transfer fee?

**Clause Lembke:** The developer determines that, whatever is in the covenants. The covenant has to be privately enforced.

**Representative Boe:** I see a couple of states that have two colors on your chart.

**Clause Lembke:** Texas and Mississippi are attempting to amend current law.

**Chairman Keiser:** Anyone else here to testify in support of SB 2149?

**Scott Breidenbach~Broker Associate with Park Company Realtors in Fargo and Vice President of the North Dakota Associations of Realtors:** (See attached testimony 2).

**Representative Ruby:** The intent of these fees is to extent out a payment of the original properties. They are able to sell at a lower price with the idea that they will get paid a fee later down the road.

**Scott Breidenbach:** That is true and in our opinion, it's a poor way of doing business. Many homes sell every 5 or 6 years and developers and investors would get a repeat on that fee many times over.

**Chairman Keiser:** It's a business model.

**Scott Breidenbach:** That is true.

**Chairman Keiser:** It's restricting a business model and we are saying no you can't do that anymore, you are going to have to get whatever you get on the first sale.

**Scott Breidenbach:** That is true however with the interest in home owners and competition of those home owners, many times they are not going to understand that and be in competition with the person down the street who does not have that.

**Chairman Keiser:** If there were two homes for sales, they both would have that fee?

**Scott Breidenbach:** Not necessarily.

**Representative Boe:** How big of a fee are we talking about?

**Scott Breidenbach:** That could be whatever would be set, a percentage, a set fee or whatever they want to set?

**Chairman Keiser:** If you went into one of those transactions that had that fee associated with it, is that something that the realtor is to become aware of and notify the buyer?

**Scott Breidenbach:** Yes, disclosure, disclosure, disclosure.

**Jack McDonald~Behalf of the Independent Community Banks of North Dakota and the North Dakota Banker's Association:** Our groups were involved in preparing this legislation and we are in favor of it. It's one more obstacle of financing of houses with this additional fee. We would be in favor of this bill.

**Chairman Keiser:** Anyone else here to testify in support of SB 2149?

**Doreen Riedmann~North Dakota Association of Builders:** This legislation was brought to our board back in November. Representative Louser presented the program. We had a lot of questions and asked if other types of fees would be permitted. What our board determined is that this would be a fee that was associated with nothing and did not cover anything. It's a business model and added to the pocket book to the developer down the road. Our board and organization decided to support this legislation and not have these private transfer fees in our state.

**Dana Bohn~North Dakota Farm Credit Council Executive Director:** (See attached testimony 3).

**Chairman Keiser:** Any questions for Dana? Anyone else here to testify in support of SB 2149, in opposition, in the neutral position on SB 2149? Closes the hearing on SB 2149, what are the wishes of the committee?

**Vice Chairman Kasper:** Moves a Do Pass.

**Representative Nathe:** Second.

**Representative Ruby:** I will probably support the motion but on one hand, I could see the benefit of these fees.

**Representative Boe:** Who enforces the covenants?

**Chairman Keiser:** You have to sue in order to enforce the covenant.

**Chairman Keiser:** Further discussion?

**Roll call was taken for a Do Pass on SB 2149 with 13 yeas, 0 nays, 1 absent and Representative Sukut is the carrier.**

Date: March 15, 2011

Roll Call Vote # \_\_\_\_\_

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2149

House House Industry, Business and Labor Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	AKO	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Sukut

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

**REPORT OF STANDING COMMITTEE**

**SB 2149: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2149 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2149

# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

SB 2149  
Testimony (1)



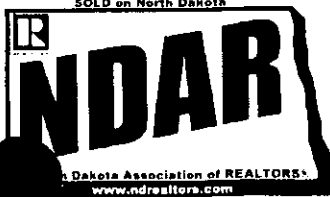
Chairman Klein and members of the Senate IBL Committee, my name is Representative Scott Louser and I represent the 5<sup>th</sup> District, which covers southwest Minot. I am also the broker/owner with Prudential Minot Real Estate and past President of the North Dakota Association of Realtors. I am here today to urge your passage of SB 2149. I have some real life situations to discuss with you this morning

Fees are disclosed when getting financing as required (Good Faith Estimate) and each of those fees are directly related to a service received/performed during the loan process. They might include appraisal, title work, insurance, surveys, location inspection, deed preparation, underwriting fee, origination fee, etc. A private property transfer fee does not come with a direct service to the borrower nor could it possibly be disclosed on the up front estimate. Other optional fees that aren't disclosed but services received might include home inspections, furnace inspections and home warranties.

The developer would or could receive the fees for an indefinite amount of time and even beyond his ownership in the business or beyond his lifetime. Poor way of planning for additional income for budgeting purposes on a project

The neighbors may move every three to five years and the next neighbor may stay for 25 years. Each time for unspecified reasons the house turns over, it returns a fee when the other house does not. Again, an unfair practice and poor use for budgeting purposes (can't determine when someone might move)

Mr. Chairman and members of the committee, I ask for your support for SB 2149.



# North Dakota Association of REALTORS® (2)

318 West Apollo Avenue – Bismarck, ND 58503-1404

Phone: 701-355-1010 or 800-279-2361 – Fax: 866-665-1011

[www.ndrealtors.com](http://www.ndrealtors.com)

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[Claus@ndrealtors.com](mailto:Claus@ndrealtors.com)

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[Suzanne@ndrealtors.com](mailto:Suzanne@ndrealtors.com)



## Testimony for Senate Bill 2149

### Senate Industry, Business and Labor Committee

January 18, 2011

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Daryl Braham. I am from Fargo and am the owner and broker of Prudential Premier Real Estate. Today I am speaking as the President of the North Dakota Association of REALTORS®. We are a statewide professional trade association with nearly 1500 members that are located and organized under 8 local Boards of REALTORS®.

- There is a disturbing element around the nation where private developers impose real estate transfer taxes or fees on the sale of real property. Private transfer fees (PTFs) are similar to the real estate tax, except that it is a private party that collects the fee upon every single sale of a particular home.
- In essence, every time a house sells during a certain time frame, a percentage of the sale price goes back to the original developer or is shared among investor partners. The levy isn't subject to negotiation between future buyers and sellers because it's mandated in a covenant. They would be collecting a fee without providing any services or benefits. The average home sells every 6 to 8 years, in many cases it can be much more often as well.
- Private transfer fees make it more expensive to purchase a home. As REALTORS®, our role is to protect consumers from any additional fees and taxes that make it more difficult for them to take advantage of the American dream of homeownership.
- Private transfer taxes represent a substantial barrier to potential buyers in seeking financing. Private transfer fees may become an insurmountable burden for potential purchasers when they seek a mortgage or title insurance due to the increased fees required to close
- As REALTORS® we feel it is unreasonable to require future homeowners, whose grandparents haven't yet even been born, to pay a fee on a contract, to which the original parties may not even be still living, especially when there is no benefit to the homeowner or the property.
- Finally, the United States Department of Housing and Urban Development (HUD) in April 2009 ruled that such fees attached to a property insured by the Federal Housing Agency (FHA) would be a violation of HUD Department regulations. As not all homes are sold with an FHA mortgage we are asking you to prohibit by statute the charging of any private transfer tax or fee.

Thank you for the opportunity to testify before you today, and I would be happy to answer any questions that you may have of me.

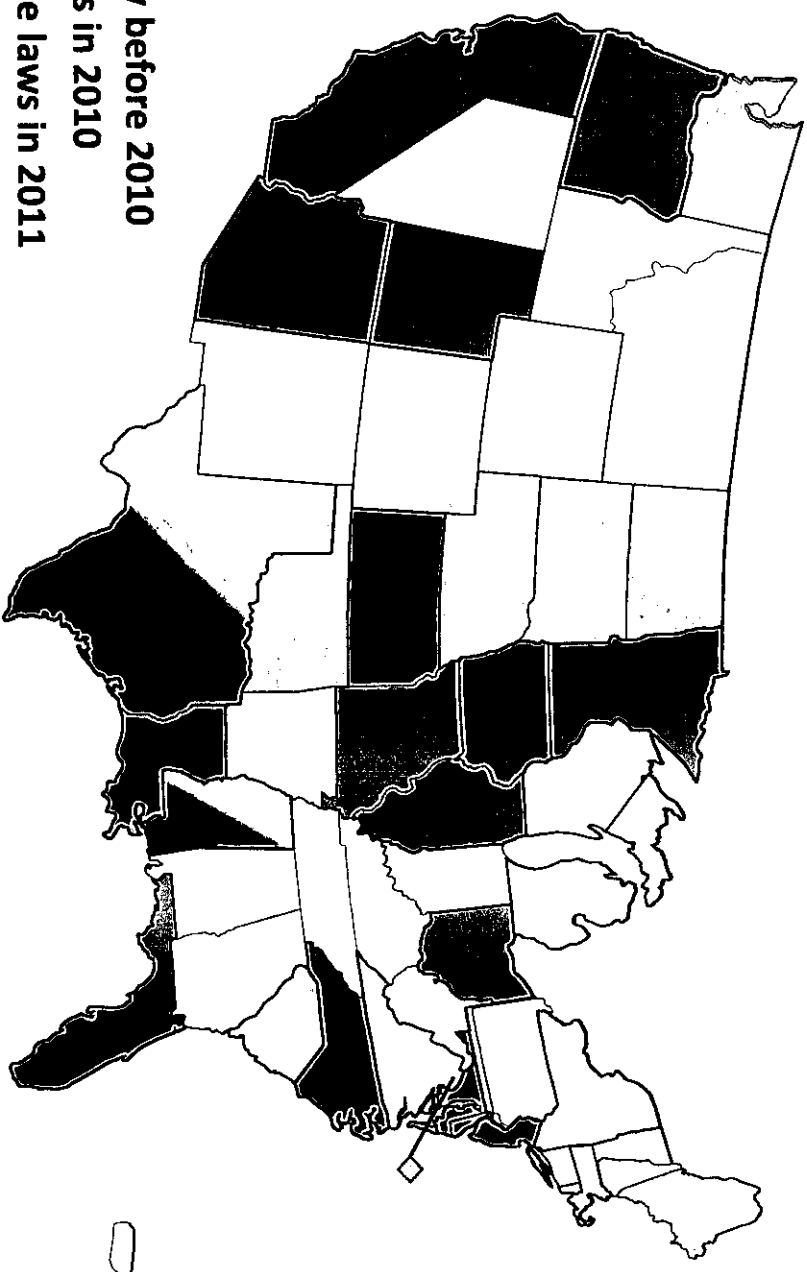


# Private Transfer Fee Laws (as of January 4, 2011)



California's law only requires disclosure of private transfer fees

- Existing law before 2010
- Passed laws in 2010
- Will propose laws in 2011



Texas and Mississippi have existing laws but are attempting to amend them in 2011





# North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

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Testimony of Dana Bohn  
North Dakota Farm Credit Council Executive Director  
SB 2149  
January 18, 2011

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) in support of SB 2149, which prohibits Private Transfer Fee obligations.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$5.5 billion in credit and financial services to nearly 19,700 customers.

Private Transfer Fees generally relate to private real estate transactions and are paid to private parties involved in the buying and selling of real estate; however, there are instances when Private Transfer Fees impact how Farm Credit Services conducts business.

Private Transfer Fees can be a restraint on the transferability of real estate and could impact the collateral value of the real estate if financed. From a lender's viewpoint, Farm Credit Services believes Private Transfer Fees add additional fees and complicate property transfers and loan closings. In addition, while Farm Credit currently has no acquired property, when Farm Credit Services is working to dispose of acquired property carrying a Private Transfer Fee obligation, such an obligation can make this effort more difficult.

The North Dakota Farm Credit Council promotes simple, uncomplicated real estate closing and title transfer and we ask for your support of SB 2149 to prohibit Private Transfer Fees in the future.

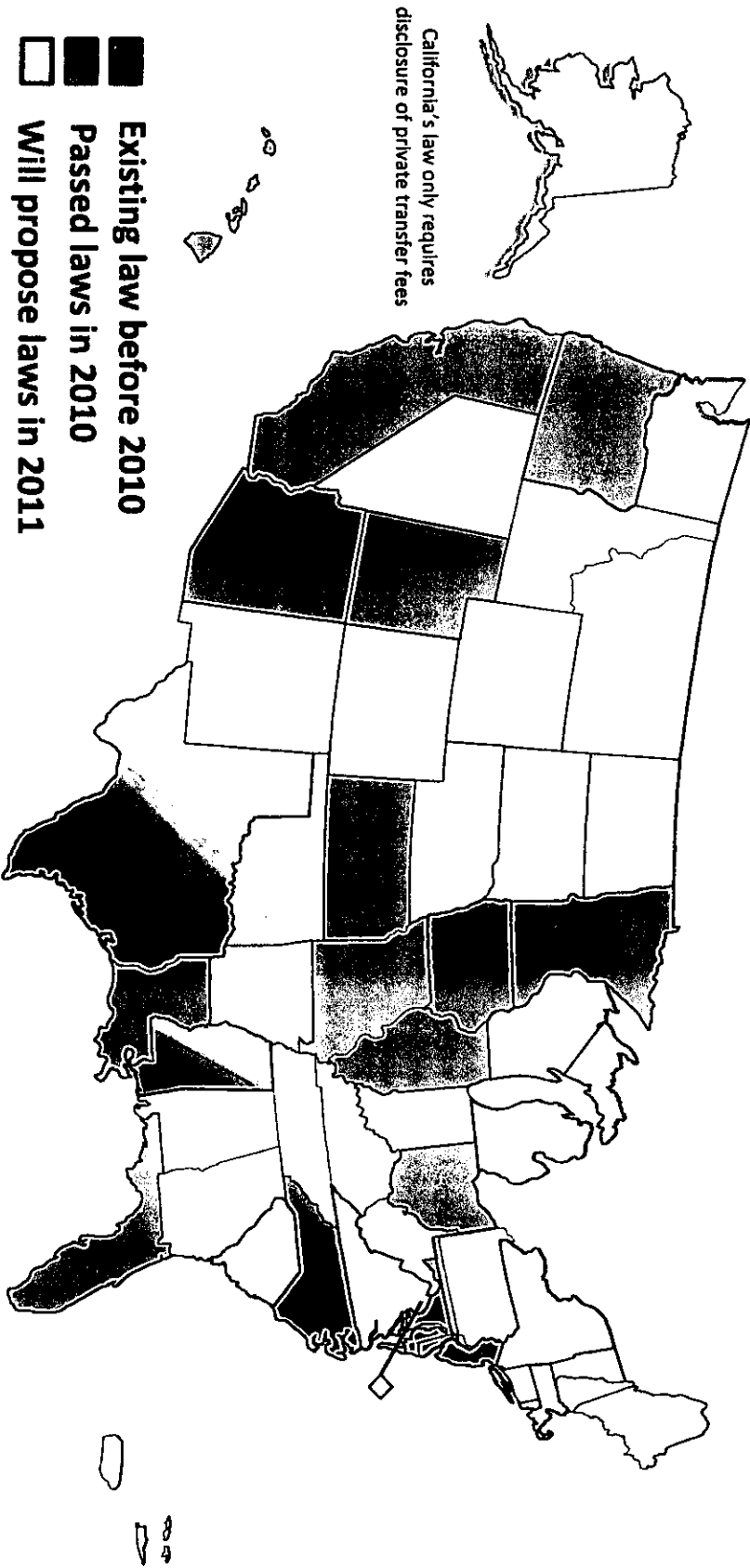
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Mandan, ND 58554  
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# Private Transfer Fee Laws (as of January 4, 2011)



Texas and Mississippi have existing laws but are attempting to amend them in 2011



2011

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Jill Beck

Jill@ndrealtors.com

*EXECUTIVE ASSISTANT*

Moni Krantz

Moni@ndrealtors.com

*GOVERNMENT AFFAIRS DIRECTOR*

Claus Lembke

Claus@ndrealtors.com

*ADMINISTRATIVE ASSISTANT*

Suzanne Wetz

Suzanne@ndrealtors.com

**North Dakota Association of REALTORS®**

318 West Apollo Avenue - Bismarck, ND 58503-1404

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Testimony 2

**Testimony for Senate Bill 2149****House Industry, Business and Labor Committee****March 15, 2011**

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Scott Breidenbach. I am a Broker Associate with Park Company REALTORS® in Fargo and am Vice President of the North Dakota Association of REALTORS®. I am asking for your support of Senate Bill 2149.

As REALTORS® we feel it is our responsibility to protect the individual rights of owners and homeownership. Private transfer fees would be an encumbrance on real estate and would have direct effects on many factors with the sale of an owner's home. First and foremost we feel that the equity a family has in their home should be protected. The equity should not be dictated by a developer or private investors. A private transfer fee would take the equity out of the owner's hands and allow a portion of those funds to be paid out to the original developer or private investors for up to 99 years.

Transfer fees would also have an impact on the amount of time a seller would have on the sale of their home, this would especially hold true when certain developments compete against other areas of development including other cities as well as bordering states that do not have private transfer fees. By allowing private transfer fees, the original developer would receive fees for a continuous amount of years even though their role in the development is done and would have been done for years. A developer would have received their fees and compensation during their initial build of the development and we feel it is an injustice to make future homeowners pay a fee for a benefit they never received.

We are asking for your support for Senate Bill 2149.

Thank you for your time and I will try to answer any questions you may have.

Our focus in 2011 is "It's All About YOU", the member. Our goals are to:

- improve communication to and from the Association to you
- develop innovative services and support in technology for you
- increase the efficiency of the business of the Association and for your business



# North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn  
North Dakota Farm Credit Council Executive Director  
SB 2149  
March 15, 2011**

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) in support of SB 2149, which prohibits Private Transfer Fee obligations.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$5.5 billion in credit and financial services to nearly 19,700 customers.

Private Transfer Fees generally relate to private real estate transactions and are paid to private parties involved in the buying and selling of real estate; however, there are instances when Private Transfer Fees impact how Farm Credit Services conducts business.

When Farm Credit Services is working to dispose of acquired property carrying a Private Transfer Fee obligation, such an obligation can make this effort more difficult. In addition, Private Transfer Fees can be a restraint on the transferability of real estate and could impact the collateral value of the real estate if financed. From a lender's viewpoint, Farm Credit Services believes Private Transfer Fees add additional fees and complicate property transfers and loan closings.

The North Dakota Farm Credit Council promotes simple, uncomplicated real estate closing and title transfer and we ask for your support of SB 2149 to prohibit Private Transfer Fees in the future.

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