

2019 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2205

2019 SENATE STANDING COMMITTEE MINUTES

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

SB 2205
2/11/2019
Job #32515

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to abandoned property; and to foreclosure of real estate.

Minutes:

Att. #1-2

Chairman Klein: Opened the hearing on SB2205. All members were present.

Nick Hacker, North Dakota Land Title Association/President, North Dakota Guaranty and Title Co.: Introduced Dean Rindy to testify on the bill.

Dean Rindy, Special Assistant Attorney General, Bank of North Dakota and the North Dakota Housing Finance Agency: see attachment #1 for testimony in support of the bill.

(11:15) Senator Piepkorn: typically, what do these abandoned properties look like, are the residential, in the country?

Dean: I do believe the amendment states that the section doesn't apply to ten acres or less in size. Includes residential dwellings of less than five units, and not used in agriculture. Principally for residential properties, maybe duplexes or quadplexes but not anything larger than that.

Senator Burckhard: Does this have any application for zombie homes after a flood? Like in Minot? Where they just sit empty for years.

Dean: This would only apply if it was abandoned and the mortgage was not being kept current. Only a streamline to the foreclosure process in terms of abandonment. If the property is abandoned and they are keeping the mortgage is current, or there is no mortgage at all, this would not apply. Simply to speed up the process of mortgage foreclosure that presently exists under North Dakota law, when that first step of giving a notice before foreclosure and allowing a cure which I agree is a good step. But it only applies when we're trying to give them the notice before foreclosure and can't do it. I don't want to say its typically a western North Dakota situation but it does happen more often there.

Chairman Klein: This would speed up that process?

Dean: Yes, it would eliminate the publication of the notice before foreclosure.

Chairman Klein: And it is a problem now?

Dean: Yes, we have a more mobile society than before, people just up and move. And a lot of times if they can up and move and buy a new home before their credit is damaged by the foreclosure action back in North Dakota, they don't care what happens back here. It causes the industry problems.

(15:30)Nick: see attachment #2 for testimony in support of the bill.

(16:38) Senator Piepkorn: Is the that in your written testimony, should that be than?

Nick: Yes.

Chairman Klein: The issue out there is there are empty houses. Somebody wants to buy them, whoever used to own them up and left. I'm just looking for an example?

Nick: What the bill ultimately does is allow for an abandonment clause early in the judicial proceeding so that after the sheriff sale on the courthouse steps, typically is going to the lender, because they are going to protect their financial interests, effectively then that property needs to sit for 60 days. Or follow these other processes, but moving that earlier into the pipeline, we'll probably shave 6-8 weeks, ultimately were looking to move these products further up on marketability. We're not talking about the cost here; we're talking about getting that title on the market. And it's not marketable until the redemption period is over.

Senator Piepkorn: I would just like a little more explanation on the bill. Just describe if there was someone here testifying against the bill what might they say?

Nick: I'm not sure what the argument would be, we just want to be sure that the consumer wouldn't be negatively impacted here.

Senator Burckhard: How discouraging is that to a potential buyer when a house is in flux like this? Do they usually stick around until its resolved to buy the house or do they look for a different house?

Nick: Generally, they haven't even started looking at that house as for sale yet because most of the time they won't put the listing sign out until the redemption period is over.

Dean: The mortgagee, the mortgage company foreclosing the property, can't put that property up for sale until they have the sheriff's deed in hand. So it's unmarketable, nobody knows it's on the market. You sometimes see short sale type things where maybe the buyer and the lending institution have worked out a deal to sell the house for less than the mortgage but that's not an abandonment situation anyways. This would not negatively affect any consumer that is presently living in the home and trying to work out their inability to pay their mortgage. If they're living in the home, still maintaining the home, we would still go through the existing North Dakota foreclosure process of giving them notice of the foreclosure 30

days right to cure. Typically, my customers will work with these types of people, it's better for the economy if the mortgage gets paid and the house stays in the name of the owner. But when we have an abandoned situation, we have a property sitting out there that the only time this amendment would kick in and we're just trying to get it back on the market, shortening that time frame on the front end so we don't have to publish three successive weeks and wait 30 days again, we could just move right to a summons of complaint by giving them that, they still have a right to defend so if they see it in the paper or we locate them, they can show up in court. They have 20 days to answer the complaint and then they can cure just like every other foreclosing. We're moving it up six to eight weeks on the back side, but we're also shortening the ability to get it on the market by 3 to 4 weeks on the front side. So maybe we're getting it on the market 2 to 3 times quicker.

Vice Chairman Vedaa: How long has it been, typically, that a payment has not been made on this? Like how many months are we looking at? Just give us an idea of how long it's been since someone even made an attempt to make a payment on this?

Dean: It varies, typically I would say the lending institutions are tolerant to about two months. They have their diligent processes too, if it's 7-10 days late they may send a letter and typically the lending institutions will attempt to resolve the default before it gets to our offices. They'll send a letter to the individual and get no response. They may call. But if the letters keep coming back and no phone is picked up, usually it's about two months in default at that time.

Chairman Klein: And all this time costs money to someone? We don't get attorneys involved for free?

Dean: It is a cost issue, most of these mortgages are guaranteed by some federal agency or state agency, so it's costing the state or federal tax payer because if these mortgages are insured by the FHA, or through some North Dakota program, the banks are getting paid back on that insurance and then the house gets replaced by HUD or whatever agency is intended to sell the house upon the end. And if it's in a decrepit state and it's been held for so long, as Nick pointed out, if we can keep the cost of the foreclosure down too by not having that publication and not holding it so long, the banks are going to try to recoup what they have into it and that means it can get back on resale for less.

Senator Kreun: In our century code I don't see 32-19-23.1, are we adding that portion?

Dean: Yes, we are.

Senator Kreun: Okay so adding that portion under the conditions that we've added in the other areas as well to make that, make it all work in a nice easy manner.

Dean: I believe that is the definition of abandonment.

Senator Kreun: I've got that, but the only question I have then is about the mail service? How many different types of notification do we normally use other than snail mail?

Dean: Under rule 4, we have to attempt to serve by registered certified mail or some type of mail that has a return receipt. So if they attempt three times,

Senator Kreun: So that's the main requirement?

Dean: Typically, not. We would send the sheriff out to attempt to serve it first.

Senator Kreun: But then the last resort is registered mail, three times?

Dean: Yes.

Senator Piepkorn: So if this bill passed, could I say there isn't undue pressure on those property owners that are living there already, the place is not being abandoned, you'll make the best effort you can to work with them to stay in that property?

Dean: Yes, you could safely say that this bill does not come into play at all if they are living in the home and attempting to make their mortgage payments.

Chairman Klein: Closed the hearing on SB 2205.

Senator Roers: Moved a do pass.

Senator Piepkorn: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Piepkorn will carry the bill.

Date: 2/11
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2205

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Koers Seconded By Kiepkorn

| Senators | Yes | No | Senators | Yes | No |
|---------------------|-----|----|------------------|-----|----|
| Chairman Klein | X | | Senator Piepkorn | X | |
| Vice Chairman Vedaa | X | | | | |
| Senator Burckhard | X | | | | |
| Senator Kreun | X | | | | |
| Senator Roers | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Kiepkorn

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

REPORT OF STANDING COMMITTEE

SB 2205: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2205 was placed on the Eleventh order on the calendar.

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2205

2019 HOUSE STANDING COMMITTEE MINUTES

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

SB 2205
3/6/2019
33296

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Foreclosure of real estate.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing on SB 2205.

Sen Holmberg~District 17: Bill regarding to abandon property & what happens with that particular property.

Rick Clayburgh~Bankers Association: This bill does not change the foreclosure for a person who is in the property. It's purely for abandon property & speeds up the process.

5:00

Rep Kasper: How does this speed up the time & how do they determine that it's truly been abandoned?

Rick Clayburgh: Some of the notice requirements eliminated & it shortens up the redemption times. I don't work directly with the abandon property.

Rep D Ruby: Wouldn't the lender or mortgage holder always have the ability to foreclose?

Rick Clayburgh: They do, but it a very complex lengthy process. This isn't in a situation of a challenge, it's truly in a situation where the individual has totally stepped away, can't be found or has no interest.

Pat Ward~ND Land & Title Insurance Association: The purpose is to shorten the redemption time. It shaves 6-8 weeks off the process. You have to have a sheriff's deed. It's only for abandon property. It's prime target for squatters.

Vice Chairman Lefor: Can you define abandon property.

Pat Ward: In the current law, under the sheriff's certificate, in sections 1 added some language. Section 2, talks about the redemption, the buy back. Section 3, in there it starts to set out what is involved in abandon property.

Vice Chairman Lefor: Section 2, are you taking out abandon property out of the regular foreclosure process?

Pat Ward: Creating a special process for it. If you meet these criteria in section 3, this gets the property back on the market.

Rep Kasper: What if somebody accidentally comes back?

Pat Ward: Once they come accidentally, once they appear & make their presence known, I would argue that is no longer an abandon property. Then you get back into the other procedures.

Rep Kasper: They will be able to stop it at any time once they come back?

Pat Ward: That would be my understanding but you could ask the attorney from Fargo.

Rep Richter: Page 2, lines 27-28 & on page 3, lines 12-14 & then on page 4, lines 23-24, is that really where it speeds up the occurrence?

Pat Ward: That's where I say correct.

Rep D Ruby: In section 5, the sheriff or sheriff's deputy, this would require them to go to the location & do the search?

Pat Ward: That's my understanding.

Rep D Ruby: Why only 10 acres?

Pat Ward: I'm not positive but I think the idea was not to deal with rural areas.

Rep Schauer: Page 3, do you know what the background is & the attempt, is it a letter?

Pat Ward: You have tried different avenues before you can foreclose.

Rep Kasper: Bottom of page 3, top of 4, it does not say that anyone is living on the premises.

Pat Ward: It's already been determined that it's abandoned in the previous section.

Chairman Keiser: We are going to have legislative council come down & talk about the technical parts. We will recess until 11:00.

19:00

Vice Chairman Lefor: Reconvene SB 2205.

Tony Weiler~Executive Director of the State Bar Association of ND: Attachment 1- Reads Dean Rindy's testimony.

26:25

Vice Chairman Lefor: Questions for Tony?

Nick Hacker~North Land Title Association: Attachment 2.

29:20

Rep Kasper: If the market is so hot, why would a home owner desert the property?

Nick Hacker: They can't come back, make the mortgage payments or lose their jobs.

Rep Schauer: Turn around property is driving the legislation. What is the beginning of the process?

Nick Hacker: There will be a beginning of the process before they identify the property. They are serving the property & that's when they look at the sheriff to serve the property. When they serve the property, that's when they notice the property is abandon.

Rep Louser: We've been below the average on foreclosures. How many properties do you think that would fit into this category in ND?

Nick Hacker: We cover 85% of property. We run into about 40-45 a month.

Rep Louser: Approximately of 50, is 10%, 20% are abandon. How many are where you can't find the owner?

Nick Hacker: I really can't answer that question.

Vice Chairman Lefor: Anyone else here to testify on SB 2205 in support, opposition, neutral? Closes the hearing.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Lefor: Moves a Do Pass.

Rep Adams: Second.

Chairman Keiser: Further questions?

Rep Louser: I'm guessing we are talking about less than 100 properties across the whole state that is driving this. I can imagine how frustrating going through the process. There has been no testimony of someone coming back to claim the property. I was against the bill but I'm in favor of it now.

House Industry, Business and Labor Committee

SB 2205

Mar 6, 2019

Page 4

Roll call was taken on SB 2205 for a Do Pass with 12 yes, 0 no, 2 absent & Rep Louser is the carrier.

Date: Mar 6, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB2205

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Lefor Seconded By Rep Adams

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | X | | Rep O'Brien | Ab | |
| Vice Chairman Lefor | X | | Rep Richter | X | |
| Rep Bosch | X | | Rep D Ruby | X | |
| Rep C Johnson | X | | Rep Schauer | X | |
| Rep Kasper | X | | Rep Adams | X | |
| Rep Laning | X | | Rep P Anderson | X | |
| Rep Louser | X | | Rep M Nelson | Ab | |
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Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Louser

REPORT OF STANDING COMMITTEE

SB 2205: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
SB 2205 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2205

TESTIMONY BEFORE COMMITTEE

Chairman Klein, Members of the Committee, my name is Dean Rindy and I'm an attorney in Fargo practicing principally in Real Estate. As such, I do a significant number of foreclosures. I am also a Special Assistant Attorney General, and as such do work for both the Bank of North Dakota and the North Dakota Housing Finance Agency. I am here today to support SB 2205.

Essentially, the proposed amendments to Century Code anticipated by SB 2205 accomplish one significant task: to relieve a foreclosing mortgagee from the unnecessary, time consuming and expensive task of locating the record title holder of abandoned property subject to a defaulted mortgage.

The bulk of SB 2205 is located in the amendment to 32-19-23. Initially, it is important to remember that the Notice Before Foreclosure contained in 32-19-20 that we are talking about is a jurisdictional prerequisite to the actual foreclosure action. 32-19-20 states as follows:

"At least thirty days and not more than ninety days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate."

Section 32-19-23 already relieves the foreclosing mortgagee from giving the Notice Before Foreclosure contained in 32-19-20 if the record title holder is deceased and no Personal Representative has been appointed to represent the estate in the county in which the property in question is located. Reasoning behind this exception appears relatively straightforward: actual service cannot be obtained on a deceased person and unless a Personal Representative has been appointed, the Estate cannot be served either.

With this reasoning in mind, the proposed amendment to 32-19-23 is intended to also alleviate a meaningless act of trying to serve a property owner who has abandoned the property with no apparent intention of returning to the property.

The Record Title Holder has already stopped making the mortgage payments, or the foreclosure process would not have started. Additionally, individuals who have stopped making the mortgage payments and abandoned the property typically have left no forwarding address. And, if through sheer diligence one does find them, (and believe me my paralegal makes every effort to do so presently to avoid having to publish the Notice Before Foreclosure) and you can get service on them through the other state's method of service of process, are they really going to cure the default and bring the loan current to stop the foreclosure?

In all my years of doing real estate and foreclosure law in North Dakota, not once has any individual who has abandoned the property ever cured the defaulted mortgage.

Right now, if we cannot find the record title holder, the law requires us to publish the Notice Before Foreclosure like we would serve the Summons and Complaint, which means three successive weeks in the county newspaper where the property is located. Then we have to wait the 30 days to allow cure, and then we have to publish the Summons and Complaint for three successive weeks again because that is the only way to serve if the defendant cannot be located. This first publication is a time consuming, expensive and worthless act in all cases.

Before I go any further I probably need to digress a bit in case any of you are wondering if not publishing or serving the Notice Before Foreclosure violates the property owners due process rights. As in the case with the deceased property owner when the notice is excused, the foreclosing party still must serve the Summons and Foreclosure by publication if actual service cannot be obtained. So really, we are just exempting the foreclosing party from publishing a Notice Before Foreclosure that gives notice of the default and allows the property owner to cure the default. The actual foreclosure still must be served by actual or published notice, so the property owner still has a right to defend the action.

The proposed amendment allows the Notice Before Foreclosure to be excused if the property is abandoned, as defined by 32-19-23.1, which I will address shortly, or if after three attempts to serve the Notice Before Foreclosure by mail as prescribed by Rule 4 of the Rules of Civil Procedure, the attempted service is returned or refused.

I said I would address abandonment in 32-19-23.1, and rather than leave abandonment to open definition and litigation, an attempt to define abandonment was created in 32-19-23.1. This definition was created by reviewing the definition in other states, principally Minnesota, that has a similar rule regarding abandonment. 32-19-23.1 provides that abandonment can be established by two methods:

- 1) By affidavit of the Sheriff or deputy sheriff of the county where the mortgage property is located, building inspector, zoning administrator, housing official or other municipal or county official having jurisdiction over the property stating that the property is not occupied and further setting forth a list of 6 supporting facts enumerated therein. Essentially, the Notice Before Foreclosure will be given to the Sheriff or his or her deputy to serve on the record title holder and would generally have notice of the condition of the property having attempted service. Also, other municipal or county officials will generally know if the property is abandoned by either non-payment of utility bills, collection of garbage, trespass complaints or general deterioration of the property. We have had examples of all of these situations.
- 2) Or an affidavit of the party foreclosing the property that they have taken possession of the property as allowed by the mortgage to preserve the property, usually upon complaints of trespass or squatters, changed the locks or reinstalled locks, and that for a period of 10 days the party having legal right to be there has not requested entrance to the premises.

Having established abandonment, a second amendment seemed logical to simplify the process of Section 32-19-19. Under Section 32-19-19, as presently exists, a mortgagee may petition a court to determine abandonment and seek immediate possession and use of the property and all benefit and rents throughout the redemption period. As I am sure you are all aware, in a typical foreclosure action, the mortgagor, or party being foreclosed upon, is entitled to the rents and profits throughout the foreclosure and redemption period. The abandonment determination of Section 32-19-19 changes this and allows the foreclosing party to take possession.

Well, if abandonment is established at the beginning of the process, it would be duplicative to petition the court again to establish abandonment again for purpose

of taking possession throughout the process. Hence Section 32-19-19 was amended to address this situation where abandonment is established at the beginning of the process and if so pled and proved to the court, the court can reduce or even eliminate the redemption period.

The remaining changes are just to reconcile the language in certain sections to address the two primary changes addressed in the Notice Before Foreclosure and possession of abandoned property.

Senate Industry Business & Labor Hearing on SB 2205

Testimony from North Land Title Association

Nick Hacker – Legislative Chair

nick@thetitleteam.com

(240) 688-2210

Chairman Klein, Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association as well as President of North Dakota Guaranty and Title Co.

Our industry provides abstracting, title insurance and real estate closing services within every county of the state. We serve as the independent third party to real estate transactions including providing services during the foreclosure process. Through that work, we provide assurances to protect parties acquiring title that title is free and clear of liens and encumbrances. Within the foreclosure process we provide reports and research to the foreclosing entity and attorney regarding the condition of title and then ultimately protect the bona fide third party purchaser.

The bill before you will streamline the process for truly abandoned property without negatively affecting consumer or the integrity of title. We support these efforts that we believe are positive for the marketability of title and support the health of the real estate market, especially in western markets. Currently there are more homes sold in a month that are listed in Watford City, which means less than a one month supply of homes, Williston is in a similar situation. A healthy real estate market is considered to have a 4-5 months of supply. The faster we can safely move this portion of the housing inventory back to the market, the better the market can respond to the influx of new families looking to located in to these markets. Further, we believe the shorter amount of time a property unnecessarily sits in the foreclosure process, the more costly it is for lenders which over ultimately increasing the cost of homes.

Thank you for your support and consideration of SB 2205

Attachment 1
Mar 6, 2019

TESTIMONY ON SB 2205

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Dean Rindy
Dean@okeeffeattorneys.com

Attachment 2
Mar 6, 2019

House Industry Business & Labor Hearing on SB 2205

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Nick Hacker – Legislative Chair

nick@thetitleteam.com

(240) 688-2210

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