

House Industry, Business and Labor Committee
Hearing on SB 2356

Testimony from North Land Title Association

Nick Hacker – Legislative Chair

nick@thetitleteam.com

(240) 688-2210

Chairman Warrey and Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association. Our members provide real estate abstracting, title and closing services to homeowners and lenders across the state.

Senate Bill 2356 as amended, strengthens real property rights including the right to convey or sell your property without delay. This bill is an important step to try to address an ongoing issue that buyers and sellers face when attempting to record a deed after the sale of property using the same legal description from the prior sale.

Under NDCC 57-02-39, the county has the right to require property owners to plat property especially if the precise location of the land may not be easily ascertained. This bill does not take that right away, it simply does not allow that right to be exercised for the purpose of rejecting the recording of the deed when the same legal description is used as the prior conveyance.

We are a race recording state which means rights are established and protected when notice of ownership is created. Notice of ownership occurs when the deed is recorded. When the deed is not recorded, significant risk to the new owner occurs. If the seller has a new lien filed against them before the deed is recorded, that lien now attaches to the buyer's real estate after the buyer paid the seller for the property in return for a signed warranty deed.

The liens that can attach include new mortgages of the seller, federal tax liens, state tax liens, construction liens, child support liens, and bankruptcy claims. When a title company is used and title insurance is purchased, the title company takes on this risk. However, title companies are not always used during the sale of property.

The enforcement of NDCC 57-02-39 causing a deed to be rejected is untimely and unnecessary. The property being sold already has a tax identification and is being taxed, so there should be no reason for rejecting the deed which then forces consumers to incur the cost of surveying and platting the property at the time of sale causing unnecessary costs, delays and risk to closing. These delays can be substantial in rural North Dakota and take several months.

Senate Bill 2356 provides North Dakotans with certainty that when they purchase property, they can obtain the protection of public notice by timely recording their deed.

Please support this bill with a Do Pass recommendation. Thank you