

**House of Representatives Judiciary Committee
Hearing on HB 1439**

Testimony from North Land Title Association

Nick Hacker – Legislative Chair

nick@thetitleteam.com

(240) 688-2210

Chairman Klemin and 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 in every county of the state. Our job is to ensure buyers acquire real property as they expect, free and clear of liens and to protect lenders on their mortgage should a borrower end up in foreclosure.

During the 2019 session the legislature adopted significant changes to the Revised Uniform Law on Notarial Acts that enabled remote notarization within the state. This significant legislation could not have occurred at a better time considering the effects of the COVID pandemic limiting in person notarizations.

As real estate closers and title professionals we close thousands of real estate transactions every month. In this process we rely on notaries to perform acts in legal affairs, in particular the witnessing of signatures on legal documents. These state appointed public officials play an important role in the deterrent of fraud and adds an important layer of verification that people are who they say they are and that they are of legal mind to execute the document. In our line of work, these are very important documents such as real property deeds, powers of attorney and trust, and affidavits important to the legal marketability of real estate.

Through North Dakota's solid framework for conducting remote online notarizations, hundreds of notaries have been enabled to provide notary services remotely upon request. They do this while protecting North Dakotans by utilizing security measures such as multi-factor authentication, tamper proof technologies and maintaining a robust audit trail of the recording of the notarial act. This is all done to protect the most vulnerable.

According to the National Adult Protective Services Association, financial exploitation of seniors and adults with disabilities is a fast-growing form of abuse. Such abuse is often carried out by those in a position of trust relative to the victim, such as: caretakers, family members, friends, attorneys, bank employees, pastors, and doctors or nurses. In addition to the risk of being taken advantage of by those closest to them, older Americans are also at risk of suffering from reduced cognitive ability because of Alzheimer's and other dementia-related diseases.

The bill before you, although well intended, quite frankly may increase these activities. By eliminating the requirement to create and retain an audiovisual recording of the performance of the notarial act, the bill removes the strongest evidence available. As the Uniform Law Commission describes it: "Being able to witness the sight and sound of the conversation between a notary public and remotely located individual provides substantial evidence as to the validity of the performance of a notarial act as well as evidence as to compliance with the requirements of the [statute]." The requirement to create and retain an audiovisual recording of the performance of the notarial act serves to protect the vulnerable in court should the vulnerable person become exploited to do something such as sign the farm away.

The bill also creates a very vague loophole in the statute. How would someone relying on the notarization in the future know the individual conducted the notarization was an employee of a non-profit organization. In fact, it would be challenging, if not impossible, for the secretary of state – the state agency that oversees notaries public – to access which individuals have authority to perform notarizations. Additionally, what constitutes elderly or low income and how would that be proven for someone that years later is relying on the notarial act on a legal document that it was a legally binding signature?

Unfortunately, not only does the bill likely increase financial exploitation, but it may also cause significant title issues in the chain of title that will result in the need for Quiet Title Actions. These are expensive legal action that can take several months to complete even though the bill attempted to help low income and elderly populations.

Please give this bill a do not pass recommendation.

Thank you.