

**Senate Political Subdivisions Committee
Hearing on SB 2223**

Testimony from North Land Title Association
Nick Hacker – Legislative Chair
nick@thetitleteam.com
(240) 688-2210

Chairman Burckhard, 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. A part of these services is to ensure buyers acquire real property as they expect, free and clear of liens and encumbrances as well as unknown ownership rights or interests. We are also firm believers in real property rights. Included in those rights is to borrow against real estate and in return grant a mortgage (mortgagor) to the lender (mortgagee). When borrowers fail to meet their obligations under the promissory note for the loan, the lender may exercise their rights under the mortgage.

The bill before you, albeit its intent, requires a judgment of foreclosure which effectively eliminates the ability for the lender and borrower to amicably resolve their differences through a deed in lieu of foreclosure. The ability to utilize a deed in lieu of foreclosure is a tool that is significantly beneficial to the borrower. It is the borrower's choice to remedy, the sum or all of, the default by conveying the real estate directly to the lender instead of following the cumbersome, expensive, and sometimes humiliating process of foreclosure.

The bill also has significant unintended consequences that will cause Quiet Title Actions. Every time title is examined, if a deed in lieu is found we will need to additionally search the civil court records for a corresponding foreclosure judgement and then ask the Clerk of Court to provide a copy of the judgement. If one does not exist, we will then require a foreclosure action to commence even though the mortgagee no longer has an interest in the property. If they will commence the action, then the property goes to sheriff sale per the foreclosure judgement, which could result in an additional deed to a successful bidder that may be different than the mortgagee from the deed in lieu, two parties claiming ownership. This will likely result in a contested quiet title action. Contested quiet title actions can take years and significant attorney's fees to resolve.

The deed in lieu of foreclosure ability under the statute should be maintained to allow borrowers and lenders to resolve their differences prior to foreclosure. If this bill is passed, we would likely be better off if the entire deed in lieu of foreclosure statute is repealed in its entirety. Please give this bill a do not pass recommendation.

Thank you.