

House Bill 1174

68th Legislative Assembly (2023-25)

Testimony of Blaine T. Johnson before the House Political Subdivisions Committee

Good morning, Chairman Longmuir and members of the House Political Subdivisions Committee. My name is Blaine Johnson. I am a partner with the law firm of Crowley Fleck PLLP in Bismarck, ND and chair of the Real Property, Probate & Trust Section of the State Bar Association of North Dakota. SBAND does not take a position on this particular bill but has identified it as a bill to track and provide technical assistance.

There are two primary concerns with House Bill 1174.

The first concern is timing of the approval and whether or not it is in fact necessary or even applicable. This concern requires a general understanding of what a condominium project entails and how they are generally developed. At its most basic level, a condominium is a development having both commonly owned elements and privately owned space within a structure on that property. These are often thought of as apartment like buildings with common areas such as parking lots, hallways, elevators, gyms, or other facilities together with private living spaces that the owner has sole access to. This is not always the case because they come in a variety of different options. Condominiums can consist of single family detached residences or twin homes with common areas such as pools, clubhouses, or other elements. Condominiums can be either residential or commercial in nature or have a mixture of both commercial and residential spaces.

When developing a condominium project we have to take into account the type of development that is intended, realizing that the condominium may be constructed in a single phase, or over the course of a number of years. It may be an existing apartment complex under single ownership that is being converted to a condominium type of ownership.

The current requirements of the declaration only require a diagrammatic floor plan of the structures built or to be built sufficient to detail the ownership of each unit, its relative location and approximate dimensions. These plans typically do not have the level of detail necessary to confirm compliance with building codes as the structure may not yet be designed or even contemplated at the stage of condominium declaration.

Take note that there are other methods of oversight that are required in the construction and development phase, such as obtaining the building permit, confirming zoning requirements, or platting of a condominium plat. The goals and objectives of local governments are being met through existing code enforcement.

The second and perhaps more important is the ambiguity of the bill itself. The approval is to be made by a building inspector or other appropriate official. The inclusion of "appropriate official" gives rise to concern. Who is the appropriate official; what qualifications and background must they have? The language of the bill provides no direction. The bill does not indicate what standard is to be applied in determining such approval nor does it indicate what the approval examines. Is this a determination that the condominium, in its early design phase, appears to pass muster under the International Building Code, is it something else? This is important from the local government's perspective as well, because once the condominium has received "approval" developers can and will argue that the local government cannot rescind that approval, or without clarification of what is being approved arguments will be made that "It has already been approved." These open-ended questions will lead to litigation between developers and local government. Ultimately hoping a court can fill in the gaps.