

**Senate Industry and Business Committee
HB 1188**

Testimony from the North Land Title Association

Chairman Larsen and Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association. I also serve as the CEO of The Title Team.

The title insurance and real estate closing industry's help drive our state's economy through the safe and efficient transfer of real property. Our industry provides services in every county of the state through our 88 members. Our job is to ensure buyers acquire real property as they expect, free and clear of liens and encumbrances.

Across the county a new scheme has arisen related to companies filing Non-Title Recorded Agreements for Personal Service (NTRAPS) in the land records. The company pays a homeowner \$500-\$1,000 in return for the right to list their home for the next 40 years and receive 3% of the sales price when the property is sold.

This type of agreement is unconscionable considering the average sale price of a home today, and what it would be 40 years from now. We are now finding these agreements in dozens of states, including a few thousand of them in Minnesota. In fact, we found one in Moorhead, MN already. We have not found any in North Dakota yet but assume they will be here in no time without House Bill 1188.

What are Non-Title Recorded Agreements for Personal Services (NTRAPS)?

They are agreements in which a service provider offers a homeowner nominal upfront compensation in exchange for an agreement for future services. These agreements are recorded in property records and purport to run with the land, binding future successors and adding cost, complexity, and barriers to transferring, selling, or financing their property.

Are NTRAPS currently being used in the marketplace?

Brokerage firms are offering nominal cash to homeowners if they sign a listing agreement that is binding for up to 40 years. Since 2018, these types of agreements have been recorded in property records as covenants on the title to homes. Homeowners face penalties of 3% of their property value, as determined at the sole discretion of the vendor, if they wish to have the encumbrance removed. For example, that 3% applies if they want to list their property with another brokerage firm or for other unanticipated occurrences such as:

- Transferring title to a family member
- Foreclosure
- Transfer on death
- Conveyance due to divorce
- Sale to another person not involving licensed real estate professionals

If the homeowner fails to pay this penalty, the firm can file a lien on the home.

HB 1133 seeks to remove impediments to transferring or financing the impacted real estate by:

1. Making NTRAPS unenforceable.
2. Creating penalties if NTRAPS are recorded in the property records.
3. Providing for the removal of NTRAPS from property records and recovery of damages.

The goal of this legislation is to protect consumers and provide a remedy, while discouraging future unfair and deceptive trade practices in real estate.

The bill has specific exemptions that are important for homeowners including:

- A home warranty or similar product that covers the cost of maintenance of a major home system (for example, plumbing, HVAC or electrical wiring),
- An insurance contract,
- An option to purchase or right of refusal,
- A maintenance or repair agreement entered by a homeowners' association,
- A mortgage loan or a commitment to make or receive a mortgage loan,
- Impairment of contractor lien rights and remedies.

House Bill 1188 protects consumers, creates clarity for title examiners, and provides attorneys and regulators with the ability and authority to assist consumers in seeking damages caused by NTRAPS.

Thank you for your time this morning. We would ask the committee to provide a Do Pass recommendation on this important bill.

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