

Blaine T. Johnson
Crowley Fleck PLLP
PO Box 2798
Bismarck, ND 58502-2798
701.223.6585
bjohnson@crowleyfleck.com

House of Representatives Judiciary Committee

Hearing on HB 1271

North Dakota State Bar Association – Real Property Section

Testimony of Blaine T. Johnson, Section Chair

Hon. Chairman Lawrence Klemm:

My name is Blaine Johnson, and I am a partner at the law firm of Crowley Fleck PLLP. I am also the chair of the State Bar Association of North Dakota Real Property, Probate and Trust Section. I have practiced law for 22 years with an emphasis on real property, business, and estate planning.

The underlying purpose of North Dakota Century Code §11-18.02.2 is to provide assessors with information necessary to determine fair market value. Fair market value is defined as the “price a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s length transaction.”

Quitclaim deeds are used for a variety of purposes besides resolving title defects. An overwhelming majority of quitclaim deeds are used when no or nominal consideration changes hands. They are used when individuals convey property into a business structure, or when that business is liquidated, and the real property assets are distributed to owners. They are commonly used for estate planning purposes, and while the grantors and grantees are often related and may fall under subsection (c) of N.D.C.C. § 11-18-02.2, they may be distant relatives and fall outside of the typical definition of immediate family. Quitclaim deeds may also be used for charitable contributions of real property.

From a practitioner’s standpoint, there are many times in which quitclaim deeds are used in which the parties do not establish a specific monetary amount for consideration. This bill would require them to do so, perhaps requiring a costly appraisal.

The support for this bill relies on the misguided position that more information is better. Even if consideration was established for a quitclaim deed, that consideration is impacted by the lack of warranty of title that is provided in a quitclaim deed. There simply is no guaranty that the grantor has any interest in the real property, and there is no recourse against the grantor if in fact he or she does not have any interest. That lack of warranty is reflected by a lower value determination that will negatively impact true fair market value assessments.

As it is, the statement of consideration reported on deeds fails to accurately take into account the value of personal property included in the sale as title companies simply restate the total purchase price identified on the purchase agreement. Those transactions often include personal property,

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sometimes of a nominal amount, but occasionally including expensive furnishings, equipment, fixtures, and even items such as boats and docks.

While clients do have concerns about privacy and generally do not want the general public knowing how much they have paid for a property, the number of circumstances where this exception is used to avoid disclosing the purchase price is exceedingly rare, and the purchaser is doing so at great risk.

For the reasons identified above, I urge you to give this bill a do not pass recommendation.