

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1242

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1242

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1242

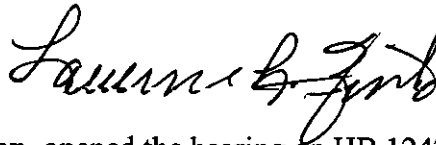
House Political Subdivisions Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
2	x		26.1 to end
		x	0.1 to 46.0

Committee Clerk Signature



Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1242, A Bill for an Act to amend and reenact section 11-18-02.2 of the North Dakota Century Code, relating to filling of statements of full consideration.

Rep Wieland representing District 13 and prime sponsor of HB1242 presented the bill to the committee. The relates to the disclosure of the sale price of real estate. Present law requires the sale price to be disclosed on the face of a warrantee deed but under certain conditions the deed may include an exemption phrase. The sale is disclosed only to the state board of equalization and can be shared only with local assessors. The North Dakota Realtors and Appraisers want to share this information as well. The bill was presented ate the request of Real Estate associations.

Claus Lembke, Executive Vice President of the North Dakota Association of REALTORS (NDAR) spoke in support of the bill. A copy of his written presentation is attached.

Rep. Koppelman (33.7) is any of the information available to the public now?

Claus Lembke : It is not if you filed this statement. If you chose to put it on the face of the deed then it becomes public.

Rep. Koppelman : If you chose not to keep the information confidential it is now available to the appraisers and Realtors? Under this bill would all of the information then become available to the public.

Claus Lembke : Under this bill there will be better protection of the public and the sellers because there will be a procedure and sanctions for abuse if the information is leaked.

Rep. N. Johnson : (What is the need for this bill?

Claus Lembke: Ideally we would like to have every real estate disclosed. 100% In the middle 80's there was wholesale failure for people to disclose their sale prices. There then was some compromise legislation. That was that if you wanted to keep it confidential there were ways provided to keep it confidential. For realtors and sales people it is essential to have to provide a good service -- to advise what property is worth based on comparable sales, etc.

There followed considerable discussion between Rep. Wrangham, Kaldor, Koppelman and several members of the committee on who and how information is used by appraiser, lending institutions, and others -- respective obligations to protect confidentiality of data, the public's need to know versus confidentiality --

Scott Louser representing the North Dakota Association of Realtors testified. A copy of his written comments are attached.

During discussion about newspaper listings and statistical uses the end of side a of the tape ran out. The discussion continues on side B of tape 2.

Joe Ibach an appraiser spoke in support of the bill. A copy of his written comments is attached.

An exchange of ideas -- question and answers followed between Mr. Ibach and Reps.

Wranbgham, Zaiser, Koppelman and Dietrich.

Timothy R. Timian representing the ND Chapter of ASFMRA stated that Rep. Herbal, Vice Chairman was in favor of the bill because the information access was absolutely essential to his business.

Ann Johnsrud, McKenzie County Recorder and appearing on behalf of the North Dakota County Recorders Association spoke in a neutral stance. She pointed to the benefits and short comings as they see it. A copy of her written remarks are attached.

Marcy Dickerson, State Supervisor of Assessment spoke as a neutral party . A copy of her remarks are attached.

There being no further testimony on HB 1242, **Rep.Devlin, Chairman** closed the hearing(46.0)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1242 b

House Political Subdivisions Committee

Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		26.7 to 38.5

Committee Clerk Signature



Minutes: **Rep. Devlin, Chairman** in work session opened the discussion for action on HB 1242.

Claus Lembke was present to answer questions from the committee. Each sponsor had been contacted about the bill and they would not be too upset if the bill failed. There is a stiff penalty for disclosure of confidential information and that is the loss of their licenses. Any amendment to stiffen that would probably be futile as the sanctions in place would most likely get an estimated 95 % of the cases. Making violations some type of infraction it would be a difficult thing to enforce or to prove. The ideal way would be to make open disclosure of all sales, appraisals and assessments to be made public as do all but 3 states do now. But in North Dakota and in the legislature there would be little or no support for that.

Rep. Herbal, Vice Chairman (37.1) moved a 'Do Not Pass' motion for HB 1242. **Rep.**

Maragos seconded the motion. On a roll call vote the motion carried **8 ayes 0 nays 4 absent.**

Rep. Maragos was designated to carry HB 1242 on the floor. **End of record** (38.4).

Date: *February 3, 2005*
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *HB 1242*

House **POLITICAL SUBDIVISIONS**

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

D N P

Motion Made By *Rep. Herb*

Seconded By *Rep. Maragos*

Representatives	Yes	No
Rep. Devlin, Chairman	✓	
Rep. Herbel, Vice Chairman	✓	
Rep. Dietrich		
Rep. Johnson	✓	
Rep. Koppelman		
Rep. Kretschmar	✓	
Rep. Maragos	✓	
Rep. Pietsch	✓	
Rep. Wrangham		

Representatives	Yes	No
Rep. Ekstrom		
Rep. Kaldor	✓	
Rep. Zaiser	✓	

Total (Yes) *8* No *0*

Absent *4*

Floor Assignment *Rep. Maragos*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 3, 2005 12:13 p.m.

Module No: HR-23-1765
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1242: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends DO NOT PASS (8 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1242 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1242

TESTIMONY HB1242

CHAIRMAN DEVLIN, MEMBERS OF THE POLITICAL SUBDIVISIONS COMMITTEE. MY NAME IS ALON WIELAND, REPRESENTATIVE FROM DISTRICT 13, AND I AM HERE TODAY TO INTRODUCE HB1242, AND TO SEEK YOUR SUPPORT IN FAVOR OF THIS PIECE OF LEGISLATION.

THIS BILL RELATES TO THE DISCLOSURE OF SALES PRICES OF REAL ESTATE TRANSACTIONS, AND TO THE DISCLOSURE OF THIS INFORMATION . CURRENTLY, LAW REQUIRES THAT ALL REAL ESTATE TRANSACTION SALE PRICES BE DISCLOSED ON THE WARRANTY DEEDS. HOWEVER, UNDER CERTAIN CONDITIONS, THE DEED MAY CONTAIN AN EXEMPTION PHRASE AND THE SALES PRICE IS DISCLOSED ONLY TO THE STATE BOARD OF EQUALIZATION AND CAN BE SHARED ONLY WITH LOCAL ASSESSORS. THIS BILL ASKS THAT LICENSED REALTORS AND APPRAISERS MAY ALSO ACCESS THAT INFORMATION AS WELL. THE NORTH DAKOTA REAL ESTATE ASSOCIATION HAS REQUESTED THAT THIS BILL BE PRESENTED, AND THEY AND OTHERS WILL PROVIDE THE TESTIMONY.

I THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS BILL TO YOU, AND I WILL ANSWER ANY QUESTIONS THAT I CAN.



Prudential

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January 20, 2005

Chairman Devlin and members of the House Political Subdivision Committee:

My name is Scott Louser and I serve as President of the North Dakota Association of Realtors. My purpose here today is to reinforce the position that has garnered nearly support across our state association without dissent. As the first point of contact for nearly every real estate transaction, the consumer (buyer or seller) expects and deserves a certain level of expertise from us as licensed agents. One of the most important questions asked of a Realtor is "what do you think this property is worth?"

Scenario: Typically, a seller contacts an agent and expresses their interest in selling their home. In some cases, they would like to "move up" to a nicer home, in some cases, they are looking for an investment opportunity and in others, they are moving out of the area. One of the most important factors in a smooth transaction is determining a fair market value for their home that will bring them a sale under the circumstances that they request.

Generally, an agent will perform what is called a competitive market analysis, which compares recently sold properties in the area to the subject property. Based on those numbers, we are able to substantiate our opinion of price. Hopefully, the property gets listed, a buyer brings an offer and the transaction closes. In most cases, the buyer and seller meet for the first time at the closing.

If a buyer is given the opportunity to file a statement making the purchase price confidential, most will accept. The listing agent and their seller sign their documents, everyone shakes hands and keys are exchanged. The listing agent, unaware of the documents the buyer just signed, completes the file at their office which includes closing the sale in the local multiple listing service, including date, type of loan used and price.

Three weeks later, a neighbor calls a third agent to perform a market analysis on their house. Logically, the new agent would use the recent sold for a comparable. Shortly after, the neighbors speak and the first buyer is upset that their "confidential" information was used by another agent.

In the same scenario, the original seller asks their listing agent to represent them in a different market in the same state. The listing agent most often will refer them to a reputable buyer agent in the new market as their expertise, including price, is not in that market. Consumers expect that we as licensed real estate agents have a working knowledge and a business sense for the real estate environment and their most often cited questions revolve around price and value. As the first point of contact, real estate licensees must have access to sold information to provide quality advice to their clients.

Scott Louser

TESTIMONY IN FAVOR OF: HOUSE BILL NO. 1242
As Presented by Joe Ibach, MAI

Presented To: House Political Subdivision Committee
Chairman: William R. Devlin
Vice Chairman: Gil Herbel

Chairman Devlin and Members of the House Political Subdivision Committee, my name is Joe Ibach. I represent only myself as a certified real estate appraiser in State of North Dakota. I have been an appraiser in North Dakota for nearly 30 years. I am here to fully support House Bill No. 1242.

How many of you have been involved in an appraisal in the recent past? Does it not make common sense that the appraiser should have access to all appropriate data needed in developing an accurate appraisal? Our present system of reporting the sales price or full consideration paid for a property in the State of North Dakota creates difficulty in using some vital comparable sales data; comparable sales are the heart of providing an accurate appraisal.

Presently, the grantee or the grantee's authorized agent may elect to report the consideration to the State which then prohibits appraisers or realtors from obtaining this data. The proposed amendment would allow only licensed or certified appraisers to obtain the sale price. The amendment then states that the sale price could be used for "statistical and comparable purposes only". It would then be the appraiser's responsibility to "personally" verify the sale before the sales price is used beyond the stated purpose. Even at that, the disclosure is generally only in the appraisal and the appraisal is not a public document.

Proper sale verification extends beyond only the sales price in truly detailing a comparable sale. However, it is far easier to accurately confirm the sale if the sales price is known beforehand. Therefore, having access to all sale transactions provides the appraiser the opportunity to provide a more accurate appraisal. Providing an accurate appraisal should be the goal for all appraisers. For this reason, I strongly encourage a do pass on this amendment.

To: Chairman Devlin and House Political Subdivisions Committee
Members
From: Ann Johnsrud, McKenzie County Recorder
President North Dakota County Recorders Association
Re: HB1242

While attempting to stay neutral on HB1242, we would like to point out a few reasons the Recorders feel this bill may not be complete in its drafting.

*Statement of full consideration paid forms are currently filed either at the State or at the Recorders office. Doing some research I find that in the year 2004 some 5048 of these statements were filed at the state. According to Marcy Dickerson this is very near 100% compliance with the requirement to file the statement at the state if listed on the deed.

*There is no filing fee at the state level to file the statement with them. If filed in the county, this falls under our \$10.00 filing fee, so in 2004 it would have cost people doing these filings \$50,480.00 to file them in the counties.

*The State Board of Equalization put these procedures in place and it is an effective procedure for the counties and state to arrive at their tax bases or sales ratios without an added expense to the filer unless they choose to file it in the Recorders office.

*If access is to be allowed as requested in the bill, we are unsure why access should be limited to a select few as suggested. As written, it would put us in a position of checking credentials to allow access to only those mentioned? At present these are not open records at the county or state level and if so passed, the counties would be able to charge an access fee to the information as it would not fall under the open records laws if not a public record.

*This bill would cause County Recorders to develop a filing system that is retrievable, duplicating the State Tax Department and the County Tax Directors information, which is currently being compiled in those offices.

*If left as is on page 1, line 9 of the bill the word one is being removed. This could cause confusion to those putting one of the statements on the deed. Only one of the statements is to be used on a deed, not any of them.

HOUSE POLITICAL SUBDIVISIONS COMMITTEE

January 20, 2005

Testimony of Marcy Dickerson, State Supervisor of Assessments

HOUSE BILL 1242

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed as State Supervisor of Assessments and Director of the Property Tax Division by the State Tax Commissioner. My testimony concerns House Bill 1242.

Section 1 of House Bill 1242 repeals a grantee's option to file a statement of full consideration with the State Board of Equalization. A statement filed with either the State Board or the Recorder is confidential, while a statement of full consideration placed on the face of the deed is a public record. Many people prefer to keep what they paid for a property confidential. Under this bill a grantee can continue to file a confidential statement with the Recorder. While there is no charge for filing a statement with the State Board of Equalization, Recorders charge \$10 [N.D.C.C. § 11-18-05(1)(a)].

When the Bismarck Tribune started publishing the prices for which property transferred, there was a noticeable increase in the number of persons in the Bismarck-Mandan area who chose to file with the State Board of Equalization to preserve confidentiality. The Tribune no longer includes the purchase price in the published information.

Recorders make monthly reports to the Property Tax Division listing all the real property transfers for which the grantee certified a statement of full consideration had been sent to the State Board of Equalization. The Property Tax Division checks to make sure all the reported statements have been received and sends a letter and blank statement to any grantee whose statement has not been received. The letter explains the statutory requirements and penalty for

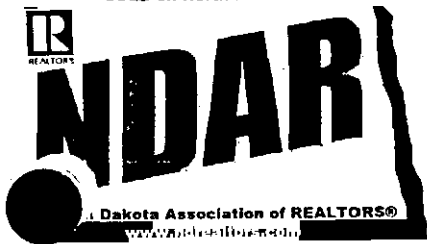
noncompliance. Upon receipt of the first letter, nearly all delinquent grantees submit a statement of full consideration. The Property Tax Division continues to try to contact any remaining delinquent grantees. For the first 11 months of 2004, Recorders reported 5,098 persons stated they had filed statements of full consideration with the State Board of Equalization. Only 323 or 6 percent of those were not received from the grantees prior to correspondence from the Property Tax Division.

The Property Tax Division has no problem with the way statements of full consideration are processed under current law. We would have no objection if the proposed change were made. Instead of receiving statements of full consideration, we would receive Bx forms from the counties just as we do now for property transfers for which statements are not filed with the State Board of Equalization. Except for no longer having to send follow-up letters to delinquent grantees, our workload would not change significantly.

The new language beginning on page 3, line 7 of this bill provides that a statement of full consideration must be made available to a licensed or certified appraiser or a licensed real estate broker or real estate salesperson if the individual agrees that the use of the information obtained is limited to statistical and comparison purposes. Releasing that information would be useful to appraisers and real estate professionals but would be a change in the degree of confidentiality afforded by this statute. It could be argued that the same information should be available to any property owner if it is available to professionals.

Confidentiality is treated differently in various states. Some states like Montana require that all property sales information be kept confidential, and some like New Jersey require that all property sales information be made public, usually by publication in a newspaper.

This concludes my prepared testimony. I will be glad to try to answer any questions.



North Dakota Association of REALTORS®

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January 20, 2005

Testimony on HB 1242

To: House Political Subdivision Committee

From: Claus Lembke, Executive Vice President
 North Dakota Association of REALTORS® (NDAR)

Chairman Devlin and members of the Committee:

My name is Claus Lembke. I represent the North Dakota Association of REALTORS® (NDAR). We are a state-wide Trade Association with over 1200 members represented by eight local boards of REALTORS®.

This bill has been introduced by Representative Wieland on behalf of a coalition of various Appraisal organizations and individual appraisers several of whom are here to testify on HB 1242. The reason for the Realtors® need for this bill will be presented by our President Scott Louser from Minot.

I'd like to explain to the committee some background information and the workings of this Bill.

When presenting a deed to the County Recorder, current law requires a real estate purchaser or his agent to provide a statement of full consideration (the sales price) on the face of the deed or if they'd like to keep that information confidential they may file a statement of full consideration with the County recorder or send it to the State Board of Equalization. Each County Recorder is required to accumulate this information monthly and forward it to the State Board of Equalization who in turn sends this information back to the County Tax director. The latter needs and uses this information for comparable sales price information in determining values of properties for assessment purposes.

The proposed changes in subsection 1 removes item A as a choice and requires that the statement of consideration be filed only with the County Recorder. All the other changes in subsections 2, 3, 4, 5, and 6 are only house keeping changes.

The new language in Subsection 7 enables Licensed Appraisers and licensed real estate agents to receive sales price information from the County Tax director but it limits the use of such information to statistical and comparable purposes only.



I have been working with County Recorders and my own Burleigh County Tax Director on this bill and a friendly amendment is suggested (See attached). These changes require the County recorder to send the statements of consideration to the County Tax director instead of to the Board of Equalization. The County Tax Director is then required to forward this information monthly to the State Board of Equalization. It would simplify the procedures and keep confidential information to a minimum in the Recorders office.

I am ready for any questions.

Proposed Amendments to House Bill 1242

Page 1, line 19, after "shall" insert "transmit the statements required by subsection 1 to the county director of tax equalization, who shall"

Page 2, line 29, remove the overstrike over "~~The~~" and remove "A county recorder and the"

Page 3, line 6, after "recorder" insert "and the county director of tax equalization"

Page 3, line 6, overstrike the final "the" and insert immediately thereafter "their offices"

Page 3, line 7, overstrike "recorder's office"

Page 3, line 8, after "available" insert "by the county director of tax equalization"

Renumber accordingly

Penalties for Tax Directors if they violate disclosure of confidential information under HB 1242

The penalty for a public servant refusing to perform a duty is a class A misdemeanor. The maximum sentence is one year in jail and a two thousand dollar fine. The penalty is found at NDCC 12.1-11-06.

Richard Riha, Burleigh County States Attorney

Penalties for Real Estate Licensees if they violate disclosure of confidential information under HB 1242

43-23-11.1 Investigations, grounds for refusal, suspension or revocation of license – Hearing – Appeal

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.

V. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.

W. Any conduct which in the determination of the commission does not meet the generally accepted standards of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.

Penalties for Appraisers if they Violate disclosure of confidential information under HB1242

ARTICLE 101-03.1

DISCIPLINARY MATTERS

CHAPTER 101-03.1-01

UNPROFESSIONAL CONDUCT

101-03.1-01-01. Unprofessional Conduct. Any of the following acts and omissions constitutes a violation of the standards of professional appraisal practice and are grounds for disciplinary action;

Violation of the confidential nature of individual, business, or governmental records to which a licensee or permittee gained access through employment or engagement as an appraiser.