

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1475

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1475

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1475

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-7-05

Tape Number	Side A	Side B	Meter #
2	xx		20.0--41.4 BAD TAPE
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: **Chair Keiser:** Let's open HB 1475.

Rep. Dietrich: appeared in support of HB 1475 on behalf of Louise Potter.

Claus Lembke - Exec. Vice Pres. ND Association of REALTORS : I support HB 1475. (SEE ATTACHED #1)

Chair Keiser: I have a concern where banks are formally dealing like real estate people. Will this expand opportunity for them?

Claus: This bill would not change their procedures at all.

Karen Fleck - Salesperson, Century 21 Landmark Realty, Mandan, ND: 33.3 testified in support of HB 1475. (SEE ATTACHED # 2)

Rep. Thorpe: If this passes, would there be a change in how you operate under the present broker arrangement?

Karen: No

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1475

Hearing Date 2-7-05

Diane Duchscher- Broker, Home & Land Co., Dickinson, ND: 37.0 I support HB 1475. (SEE

ATTACHED #3)

Arlene Volk - Salesperson, Century 21 Morrison Realty, Bismarck, ND: 41.1 (SEE

ATTACHED #4)

Chair Keiser: What are the wishes of the committee?

Rep. Ruby: I move a DO PASS on HB 1475.

Rep. Dietrich: I second.

VOTE: 13 - YES, 0 - NO, 1 - AB, PASSED Rep. Dietrich will carry the bill.

NOTE: Nothing could be heard on this tape

FISCAL NOTE
 Requested by Legislative Council
 02/07/2005

Bill/Resolution No.: HB 1475

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal note.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Patricia M. Jergenson	Agency:	ND Real Estate Commission
Phone Number:	328-9737	Date Prepared:	02/09/2005

Date: 2-7-05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1475

House INDUSTRY, BUSINESS AND LABOR

Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Ruby Seconded By Rep Dietrich

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	AB	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 13 No 0

Absent (1) Rep. Ekstrom

Floor Assignment Rep. Dietrich

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

REPORT OF STANDING COMMITTEE (410)
February 7, 2005 1:06 p.m.

Module No: HR-24-1978
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1475: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1475 was placed on the Eleventh order on the calendar.

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1475

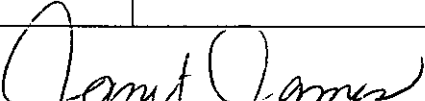
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1475

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1	X		2880 - 4611
Committee Clerk Signature 			

Minutes:

Senator Duane Mutch, Chairman of the Senate Industry, Business and Labor Committee opened the hearing on HB 1475 relating to real estate salesperson licenses for business organizations.

All member of the committee were present.

Representative Louise Potter of District 17, sponsor of HB 1475, introduced the bill reminding the committee that there are real estate brokers and real estate salespersons and that they have different authority in what they are allowed to do. This bill is relating to the real estate salesperson licenses for business organization.

Dave Lanpher, a REALTOR with the Park Company/GMAC Real Estate in Fargo, testified in support of HB 1475 (See attached testimony).

Karen Fleck, a real estate salesperson with Century 21 Landmark Realty in Mandan, North Dakota testified in support of HB 1475 (See attached testimony).

Senator Duaine Espegard understood what was being attempted but asked what precludes the salesperson from doing it currently.

Karen Fleck that a real estate salesperson cannot incorporate as a sales agent but would need to become a sales broker and some do not want to do that.

Senator Mutch asked if they could then work for several brokers.

Karen Fleck answered they would still work for only one broker and then could incorporate so they can hire and fire assistants or employees. They then would not have to pay taxes first on income, then pay the assistants who then pay their taxes. The broker would then send the commission check in the name of the corporation without withholding taxes taken out.

Senator Karen Krebsbach asked for an explanation of the how sales commission is passed from real estate agent to another in regards to the salesperson.

Karen Fleck answered that the broker issues the sales commission to the sales agent.

Commission checks are only passed between brokers for the agents.

Senator Krebsbach asked if the bill would change that.

Karen Fleck answered that it would not change that process but the broker would now issue the sales commission in the name of the salesperson's corporation.

Discussion was held by the committee regarding tax benefits and personal liability benefits.

Diane Duchscher, Designated Broker and Partner of the Home and Land Company in Dickinson, North Dakota testified in support of HB 1475 (See attached testimony).

Arlene Volk, Salesperson and independent contractor with Century 21 Morrison Realty in Bismarck, North Dakota, testified in support of HB 1475 (See attached testimony).

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Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1475

Hearing Date 3-22-05

Senator Mutch asked for additional testimony on HB 1475 and hearing non closed the hearing on HB 1475.

Senator Joel Heitkamp made a motion for a Do Pass of HB 1475.

Senator Espegard second the motion.

Roll call vote for a Do Pass of HB 1475 was taken indicating 7 YEAS, 0 NAYS AND 0

ABSENT OR NOT VOTING.

Senator Heitkamp will carry HB 1475

REPORT OF STANDING COMMITTEE (410)
March 22, 2005 1:56 p.m.

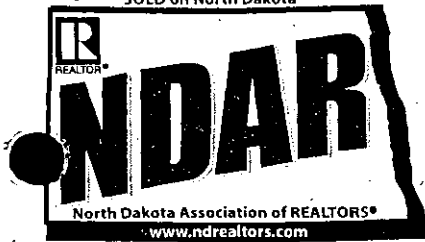
Module No: SR-52-5756
Carrier: Heitkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1475: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1475 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1475



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Moni Krantz

February 7, 2005
Testimony on HB 1475

To: House Industry, Business and Labor Committee

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

Chairman Keiser and members of the House IBL 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®.

We estimate that two thirds of our Real Estate firms in North Dakota operate as a corporation. They do that for a variety of reasons. To incorporate or to create a Limited Liability Partnership (LLP) allows a company a limited liability, better management of its income and expenses as well as distribution of profits. It also offers several tax advantages.

The ability for real estate salespersons to incorporate is not possible today. Our legal counsel and the Real Estate Commission's attorney inform us that under our current statutes a salesperson cannot incorporate. It has to do with the fact that a salesperson has to work under the supervision of a real estate Broker. Any commission or fee to a salesperson can only be paid from the employing Broker to his or her own salesperson. For example, a Century 21 Broker cannot pay a commission to a Coldwell Banker salesperson.

According to our legal counsel and the Legislative Council, HB 1475 as it is proposed will change the law to allow salespersons to incorporate or create a Limited Liability Corporation (LLC). LLC's and LLP's and other versions of incorporation are covered under NDCC 10-31-01 and are referred to in summary as "business organizations." Therefore, HB 1475 speaks to and uses the term business organization.

We support this legislation and we ask you to give this bill a Do Pass.



SOLD on North Dakota



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February 7, 2005

Testimony on HB 1475

To: House Industry, Business and Labor Committee

From: Karen Fleck, Salesperson
Century 21 Landmark Realty, Mandan, ND

Chairman Keiser and members of the House IBL Committee:

My name is Karen Fleck. I am an independent contractor associated as a real estate salesperson with Century 21 Landmark Realty in Mandan. I enjoy the real estate business and I make a very good living of it.

A few years ago, my accountant suggested that I should look into incorporating my business. The Real Estate Commission however informed me that it is not possible to do unless I become licensed as a real estate Broker. There are many benefits to being able to incorporate according to my accountant Rhonda Mahlum, who is by the way also the accountant for the North Dakota Association of Realtors®.

Some of the advantages for me to operate as a corporation are for example: better tax planning and the ability to hire employees to assist me with my business. I have been advised that an S-corporation, which is a small business corporation, allows me the ability to pay myself reasonable wages and any profit after expenses are payable to me in a distribution. At year's end, my S-corporation would issue me a W-2 subject to all withholding and social security contributions plus a K-1 for the distribution.

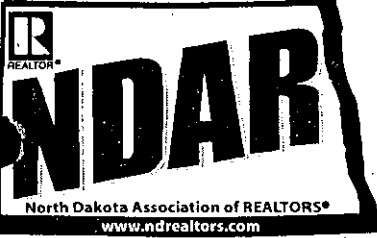
For example, if my business generates \$120,000 of income to my S-corporation, I may set us a reasonable salary of \$60,000 annually to myself. If my expenses including payroll for any assistant that I hire are to be \$40,000, my year-end distribution to me as the owner of the S-corporation would be \$20,000.

There are many tools and advantages to incorporating and I believe we should be entitled to avail ourselves of this opportunity as other professionals can today.

Please give HB 1475 your favorable consideration.

(2)

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February 7, 2005
Testimony on HB 1475

To: House Industry, Business and Labor Committee

From: Diane Duchscher, Designated Broker
Home and Land Company, Dickinson, ND

Chairman Keiser and members of the House IBL Committee:

My name is Diane Duchscher, Designated Broker and partner of the Home and Land Company in Dickinson. I am also a member of the North Dakota Association of REALTORS® (NDAR) Executive Committee and I represent the Badlands Board of REALTORS® on the NDAR Board of Directors.

I support HB 1475. It will afford salespersons to avail themselves of the benefits and advantages that corporations have to offer. HB 1475 allows a broker to pay any fees or commissions created by a salesperson directly to that salesperson's corporation. The salesperson can then pay expenses, wages and distributions as they best see fit. A corporation also allows them to better manage reserves for any down cycles which are common in our business.

Today a salesperson who wants to set aside a rainy day fund will first have to pay all taxes and social security obligations on all paid out earnings.

Please support and pass HB 1475.





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4

February 7, 2005
Testimony on HB 1475

To: House Industry, Business and Labor Committee

From: Arlene Volk, Salesperson
Century 21 Morrison Realty, Bismarck, ND

Chairman Keiser and members of the House IBL Committee:

My name is Arlene Volk, a licensed real estate Salesperson and independent contractor with Century 21 Morrison Realty in Bismarck. I am also a Past President of the North Dakota Association of REALTORS® (NDAR) and a member of the Political Affairs committee.

I ask you to adopt this legislation that gives me and other salespersons the ability to incorporate. To our knowledge, other professionals like accountants, engineers, lawyers and real estate brokers have the ability to do so today.

Most, if not all, salespersons in North Dakota operate as independent contractors. We are really in business for ourselves. Many of us hire employees or unlicensed assistants, as we call them. To be able to incorporate would give us an additional tool to more efficiently manage our business.

I urge you to give favorable consideration on HB 1475.

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March 22, 2005

Testimony on HB 1475

To: Senate Industry, Business and Labor Committee

From: Dave Lanpher, REALTOR®
Park Company, GMAC Real Estate
North Dakota Association of REALTORS®

Chairman Mutch and members of the Senate IBL Committee:

My name is Dave Lanpher. I am a REALTOR® with Park Company/GMAC Real Estate in Fargo. I am the current President of the Fargo Moorhead Area Association of REALTORS® and also the current chair of the Education committee and a member of the Political Affairs committee of the North Dakota Association of REALTORS® (NDAR).

We estimate that two thirds of our Real Estate firms in North Dakota operate as a corporation. They do that for a variety of reasons. To incorporate or to create a Limited Liability Partnership (LLP) allows a company a limited liability, better management of its income and expenses as well as distribution of profits. It also offers several tax advantages.

The ability for real estate salespersons to incorporate is not possible today. Our legal counsel and the Real Estate Commission's attorney inform us that under our current statutes a salesperson cannot incorporate. It has to do with the fact that a salesperson has to work under the supervision of a real estate Broker. Any commission or fee to a salesperson can only be paid from the employing Broker to his or her own salesperson. For example, a Century 21 Broker cannot pay a commission to a Coldwell Banker salesperson.

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We support this legislation and we ask you to give this bill a Do Pass.



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March 22, 2005

Testimony on HB 1475

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Please give HB 1475 your favorable consideration.



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Randy Schwartz

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Jamestown:

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Norma Opperude, GRI

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March 22, 2005

Testimony on HB 1475

To: Senate Industry, Business and Labor Committee

From: Diane Duchscher, Designated Broker
Home and Land Company, Dickinson, ND

Chairman Mutch and members of the Senate IBL Committee:

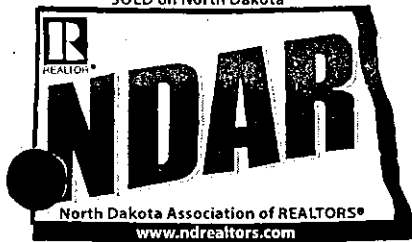
My name is Diane Duchscher, Designated Broker and Partner of the Home and Land Company in Dickinson. I am also a member of the North Dakota Association of REALTORS® (NDAR) Executive Committee and I represent the Badlands Board of REALTORS® on the NDAR Board of Directors.

I support HB 1475. It will afford me and other salespersons to avail ourselves of the benefits and advantages that corporations have to offer. HB 1475 allows a broker to pay any fees or commissions created by a salesperson directly to the corporation. The salesperson can then pay expenses, wages and distributions as they best see fit. A corporation also allows me to better manage reserves for any down cycles, which are common in our business.

Today a salesperson who wants to set aside a rainy day fund will first have to pay taxes and social security on all paid out commissions.

Please support and pass HB 1475.

SOLD on North Dakota



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March 7, 2005

Testimony on HB 1475

To: Senate Industry, Business and Labor Committee

From: Arlene Volk, Salesperson
Century 21 Morrison Realty, Bismarck, ND

Chairman Mutch and members of the Senate IBL Committee:

My name is Arlene Volk, a licensed real estate Salesperson and independent contractor with Century 21 Morrison Realty in Bismarck. I am also a Past President of the North Dakota Association of REALTORS® (NDAR) and a member of the Political Affairs committee.

I ask you to adopt this legislation that gives me and other salespersons the ability to incorporate. To our knowledge, other professionals like accountants, engineers, lawyers and real estate brokers have the ability to incorporate today.

Most, if not all, salespersons in North Dakota operate as independent contractors. We are really in business for ourselves. Many of us hire employees or unlicensed assistants, as we call them. To be able to incorporate would give us an additional tool to more efficiently manage our business.

I urge you to give favorable consideration on HB 1475.