

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1421

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1421
January 24, 2011
13312

Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Relating to good funds for real estate transactions

Minutes:

Chairman Keiser: Opens the hearing on HB 1421.

Raeann Kelsch~Representative from District 34-Mandan: I stand before you in support of HB 1421. I introduced this on behalf of the abstract companies due to some issues, I have a couple of companies located in Mandan and thought this issue was important enough to be brought forward. There are experts here that will come forward and explain.

Chairman Keiser: Anyone else here to testify in support of HB 1421?

Howard Malloy~North Dakota Land Title Association: (See attached testimony).

Representative Frantsvog: How long before a closing do you get your closing statements prepared in (inaudible)?

Howard Malloy: It depends when we get instructions from the lender; at that point we prepare the document. Usually the same day those numbers are provided to the customer. We are waiting on the lender.

Representative Frantsvog: So it would be difficult to get the good funds in place prior to the time of closing?

Howard Malloy: What I see happening is that because we have a good funds law, the lender will be required to provide us the instructions earlier so that we can get the numbers done, so the funds can be collected and deposited. So what it's going to do, in my opinion, is that it's going to provide a couple of days before closing, instead of everything happening at the last minute because we have to have the numbers from the lender. Now we can provide those numbers to the customers at that point when we get the instruction and then we have the amounts that are required. Then the lender and the borrower, who every, will get the funds to us prior to closing. I think it would improve the situation.

Chairman Keiser: Currently, you or your agents are there, the commercial loan real estate officer is there from the bank, the buyer and seller may or may not both be there, but. I

giving a lot of money in a form of a check or some other form of currency, and or, I'm receiving them. Is the issue that when all the transfers are made at the table, that there may not have actual dollars behind them. What this bill will do is require that any form of money that is transferred actually have dollars behind them?

Howard Malloy: The intent is that the funds, however presented, be deposit and collected, which will allow us to have proof that there are dollars behind the checks. The bottom line is that we would like to have the money in the accounts before we spend it.

Chairman Keiser: Will that slow down transactions or just require more time on the front end to get things more organized better?

Howard Malloy: That happens often times and I believe this will change that it because it will require that information be provided sooner so the amounts required can be provided to individuals or lenders. We will get it sooner so that the pay offs should improve. It is the case in other states, where this happens, that it's a little more controlled environment.

Representative N Johnson: Help me walk through; my questions are, at the time of the transaction that we do have to setup a separate escrow and checking account for each of these deposits in and out?

Howard Malloy: No, we have an escrow account that established, it's just one account, so the funds do get co-mingled and that's not a problem, its customary practice nationwide. There is a separate escrow file set up, so there is internal accounting controls so that the funds don't get co-mingled from one file to another, but as far as the escrow account, it's one account.

Representative Boe: You were talking about cashier's checks and saying that they are easy to cancel. When my banker explained cashier's checks to me, he said he would go into my account and upon issuing the cashier's check; he would take the money out of my account. He also recommended in the usage of them, he frequently make the check out to me, so I can endorse it over to the receiver of it in case the deal doesn't go through. So now I can dispose of the check easily because if I have the check written out to the other guy's name, what do I do with it? Could you expand on how you would cancel the check?

Howard Malloy: It's my understanding that you would just go to the bank and cancel the check. It's happened to us. They have canceled the check and the funds are returned to your account. You may have to have a good reason but some people who are creative and those are the people we are worried about.

Representative Boe: It defeats the purpose of the cashier's check.

Howard Malloy: It concerns us and as soon as I found this out, yes I lost a lot of faith in cashier's check. It proves that the funds are good but as soon as the check is canceled, it could defeat the purpose.

Representative Kreun: The transactions collect can be intermingles in the account itself. What you are indicating basically, a cash flow problem because you have check coming in

and checks going out of escrow account. If you have cash in there and you can cover the checks, it should be good, shouldn't it?

Howard Malloy: The only cash we have in the account is the cash from other parties.

Representative Kreun: If this is your business, wouldn't it behoove to make sure enough is in there so that it has a cash flow so that the checks are good?

Howard Malloy: That's true; we do make sure that we have funds in the account. We are not in the type of business that we would have our own funds.

Representative Kreun: You're in business, you are the middle man, the checks good or bad, I think that would be your job in my opinion.

Vice Chairman Kasper: Let's say your account has no transaction in it because all transactions are done and a new party comes in and they are going to have 200,000 dollar sale, you put a 200,000 dollar check into you trust account, you can't at that point, immediately write another 200,000 dollars on the other side because that 200 that is just deposited is not good funds at that point in time. Isn't that what our problem is?

Howard Malloy: The bank will pay it, but they charge us an uncollected funds charge. If customer came and wanted cash, they would deny.

Vice Chairman Kasper: If you pay off the same day, you are charged a fee, so that is part of you're lose because the funds are not really good but they will pay it if you pay us a fee. If we make these good funds, the fee goes away because the money is good and they will not be able to charge a fee?

Howard Malloy: That is true, but there is also a great risk if the funds are not good.

Vice Chairman Kasper: If we deal in the good funds area, you can wait until the funds are good but that eliminates the fees and it just makes the parties wait a day or two.

Howard Malloy: Correct.

Chairman Keiser: You have to think outside the box, for example a nursing home for 13 million. Further questions?

Representative M Nelson: You said that there were these funds coming and there are conditions on them. Is it always where the conditions can be satisfied before closing or is the possibilities that we create a logger head here by someone saying that they can't release the funds until the conditions are done or someone else saying I can't meet that condition until closing, so we never get there.

Howard Malloy: I think most of the conditions are loan conditions; the lender sends the money and says, ok, you need to follow all of these steps. So you do the closing, send information to the lender, they check off conditions, that would be the most normal

scenario. Very often times the wired funds are revocable and we would like to see them irrevocable.

Representative Frantsvog: Starting with line 21 on page 2, where you talked about sending information back to the loan officer or lending institution, it could be a very substantial period of time because this says that you may not make disbursements. Is that correct?

Howard Malloy: It's usually not that long. The basis of the bill is we cannot disburse unless we have good funds and that's the trigger language in the last paragraph. It could take a long time.

Representative Clark: If someone revoked their wired fund, what actions would you take next?

Howard Malloy: I call the lawyer.

Representative Clark: Have you ever had it happen to you?

Howard Malloy: We had situations where the companies couldn't support their wire.

Chairman Keiser: On the page 2, line 23, why the limit of 10,000 dollars?

Howard Malloy: If think that language got messed up. The bill that Legislative Council was looking at was Indiana statue. The intent was to disperse funds up to 10,000 without good funds. The 10,000 allowed a lower level transaction to go without good funds.

Chairman Keiser: Is that something that you and the people represent, want? We can check to see if that's true and if it is, we can amend it.

Howard Malloy: What was intended and that would allow smaller checks to come and go without having to be deposited and collected.

Chairman Keiser: Anyone here to testify in support for HB 1421.

Claus Lembke~North Dakota Association of Realtors: An amendment to make the deposit on page 2, line 4, change 1,000 to 3,000.

Chairman Keiser: Anyone else here to testify in support for HB 1421, in opposition, neutral? Closes the hearing on HB 1421, what are the wishes of the committee?

Vice Chairman Kasper: Moves amendment.

Representative N Johnson: Second.

Voice roll taken, motion carried on page 2, line 4, change \$1000 to \$3000.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Moves a Do Pass as Amended.

Representative Nathe: Second.

Representative Boe: I was wondering about lines 21-23, should we check with somebody to make sure it says what they thought it says. Can the intern look at that?

Chairman Keiser: We have a request to withdraw the motion.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1421
January 24, 2011
13316

Conference Committee

Committee Clerk Signature *Ellen Letang*

Explanation or reason for introduction of bill/resolution:

Relating to good funds for real estate transactions

Work Committee Minutes:

Chairman Keiser: Opened the committee work session on HB 1421.

Jennifer Clark: My understanding of the situation, keeping in mind the definitions we have, we are talking about a real estate transaction and the parties to that transaction have deposited money into an escrow account for a real estate transaction. When the money comes in and before that money comes out, if it's 10,000 or more, it has to be within what is defined as good funds, which are essentially non-revocable. It's insuring the validity of your transaction so that don't have someone stopping payment on check. Is that consistent of what you had in committee?

Chairman Keiser: What the folk that brought this bill in wanted that section to say it was that for amounts less than 10,000 dollars, they do not have to be good funds. They could issue a check up to 10,000 dollars.

Jennifer Clark: That's correct.

Representative Kreun: That means 10,000 of a sales transaction or does it mean to pay out 10,000?

Jennifer Clark: I'm not sure I can fully answer that. We talked about 10,000 dollars; we are talking about funds received from any single source. You may have multiple sources that come in; we are talking about large sources that come in.

Representative Kreun: If it's the sale of 10,000.

Chairman Keiser: This would be commissions, payment on a special or something like that that would be paid out of the escrow account, those checks could be issued without being good funds. That is all this is saying.

Representative Kreun: Even that, 10,000 dollars isn't much. That 10,000 doesn't mean a lot.

Chairman Keiser: I understand what you are saying but over 10,000, they say we want good funds.

Representative Kreun: Isn't that part of their business?

Chairman Keiser: That is what this bill is saying.

Representative Kreun: Why can't they do that without making it law? I have a hard time with this.

Jennifer Clark: Consider the definition of real estate transaction when we are talking about this escrow, we are talking about as they relate to a real estate transaction. We are talking about the purchase sale or financing of interest in real estate settlement or closing, I don't think we are talking about the escrow that I have at a local bank, we are talking about a closing. One of the items in discussion is the concern that the risk involved these with larger transaction. Could the company that is performing the real estate transaction service require this on the own, my understanding is they could. I think the risk the level playing field. That's public policy decision but that's part of the discussion.

Chairman Keiser: That it. Any other questions?

Chairman Keiser: What are the wishes of the committee?

Representative Vigesaa: Motions a Do Pass as Amended.

Vice Chairman Kasper: Second.

Chairman Keiser: Further discussion?

Roll call taken on HB 1421 for a Do Pass as Amended with 9 yeas, 4 nays, 1 absent and Representative Vigesaa is the carrier.

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Title.03000

Adopted by the Industry, Business and Labor
Committee

January 24, 2011

VPC
1/24/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1421

Page 2, line 4, replace "one" with "three"

Renumber accordingly

Date: Jan

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1421

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

p. 2, line 4
change \$1,000 to \$3,000

Date: Jan 24

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1421

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

withdraw the motion

Date: Jan 24-2011

Roll Call Vote # 1

Committee
work

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1421

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Vigasaa Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	Ab	
Representative Clark		✓	Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun		✓			
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigasaa	✓				

Total Yes 9 No 4

Absent 1

Floor Assignment Rep Vigasaa

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

REPORT OF STANDING COMMITTEE

HB 1421: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1421 was placed
on the Sixth order on the calendar.

Page 2, line 4, replace "one" with "three"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1421

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1421
March 14, 2011
Job Number 15347

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to good funds for real estate transactions

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing on House Bill 1421.

Representative Kelsch: In support of the bill and she introduces it on behalf of constituents in Mandan that had brought an issue forward in regards to good fund laws.

Erin Schmitz, Vice President of North Dakota Guaranty and Title Company: Testimony and Proposed Amendment Attached (1).

Chairman Klein: Asked if her amendment would change the context of the bill.

Erin: Said they were adding that a cashier's check not to exceed ten thousand dollars and also indicating that a check drawn on an escrow account of another closing agent if they have reasonable and prudent grounds to believe that the funds are sufficient may be considered "good funds".

Senator Laffen: Asked what "good funds" were.

Erin: Said that good funds are collected funds, collected in the escrow account which cannot be taken back. She said that currently a cashier's check, certified checks and even wires can be stopped.

Senator Nodland: Said what he understands is that she wants the funds collected and in an escrow account before closing.

Erin: That's correct.

Senator Andrist: Said he is trying to understand why an escrow account is necessary in the first place, is that the only way you can guarantee that the money is there?

Erin: She said as closing company they are required to have a separate escrow account for closing transactions as opposed to their operating accounts. They have to keep the monies separate.

Senator Murphy: Asked if this has a retarding affect on the speed of the transactions, aren't realtors worried about this?

Erin: Said that from their discussion with the North Dakota Land Title Association they are hoping to have the opposite effect of that. She said under the Real Estate Settlement and Procedures Act it is now indicated that buyers should have their settlement figures at least twenty four hours in advance. The "good funds" is a protection to that consumer because it will hopefully make the lenders and closing companies get the numbers out sooner so that the end consumer can get their settlement numbers sooner and as many people know at this time some time the closing numbers don't come in until ten minutes after the closing has started.

Senator Nodland: Said that he is assuming that the guarantee and title companies will be bonded quite heavily and they are taking the responsibility of handling these funds in their escrow account.

Erin: Said that they currently have the responsibility of handling the funds in their escrow account.

Questions

Peggy Palmes, Member of the North Dakota Land Title Association: Testimony Attached (2).

Senator Laffen: Asked if their industry could just self police this and say that they require "good funds", does it need to be a state law.

Peggy: She said that she feels strongly that it needs to be a state law. Currently there are violations of the underwriter's requirements for "good funds".

Chairman Klein: Said that they are breaking the underwriter's law now they are going to break the laws of the state?

Peggy: Said she is hoping this will work.

Senator Schneider: Asked what the penalty was for not complying if this were enacted.

Peggy: Said she didn't know.

Senator Andrist: Asked if most abstractors have a guarantee and title function.

Peggy: Said they all do not.

Questions

Tim Ackinson, North Dakota Title Company: He talked about how things have changed and how things are no longer "good funds". He said the bill is good for North Dakota.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1421
March 16, 2011
Job Number 15525

Conference Committee

Committee Clerk Signature	<i>Erin Schmitz</i>
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Explanation or reason for introduction of bill/resolution:

Relating to good funds for real estate transactions

Minutes:

Discussion and Vote

Chairman Klein: Said to go to 1421 and it is about the "good funds".

Senator Nodland: Said that he visited with the banking industry and the bankers and realtors had a little bit of heartache with it but they are staying neutral. He moved to adopt the amendment by Erin Schmitz.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Nodland: Moved a do pass as amended.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Larsen to carry the bill

Date: 3/16/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1421

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Nodland Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Larsen

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

REPORT OF STANDING COMMITTEE

HB 1421, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1421 was placed on the Sixth order on the calendar.

Page 2, after line 10, insert:

- "e. A cashier's check not to exceed ten thousand dollars in the aggregate that is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States.

- f. A check drawn on the escrow account of another closing agent, if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1421

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1421
April 4, 2011
16292

Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Relating to good funds for real estate transactions

Conference Minutes:

Chairman Kreun: The purpose of this bill was to put definitions into law as well as the definitions of good funds. There are two additions in the amendments and if the Senate added the components, the reasons behind it.

Senator Nodland: I going to let Senator Larsen explain the amendment because he carried the bill.

Senator Larsen: (See attached testimony).

Senator Nodland: That was from the request of the abstract company and convinced us to add those amendments.

Chairman Kreun: If you look at Item d on the second page, the 3,000 that we put in there was basically an earnest money situation. Item e, your amendment, this is almost the same as cash that has to be brought into that transaction and Item f, this is the potential transfer of one agent to another that would close in a different area. Rather than having to cash the check, reissue another check and bring it that particular closing agent, this would be transferrable to that account, it that correct understanding?

Representative Ruby: What I'm wondering is now you have the cashier's check not to exceed \$10,000. Down in the real estate transaction disbursements, it talks about closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds received any single party to the real estate transaction which in the aggregate are at least 10,000 are good funds. Is the reason that you have the cashier's check not to exceed \$10,000 is to be consistent?

Senator Nodland: It looks like redundancy but it's to be in conjunction with that. Their biggest concern was "good funds". It was coming up with a definition to describe good funds because what we thought was good funds, weren't. All the burden is on the closing

agent because now everyone hires an abstract company is the closing agent that works for the realtor and the lending institution.

Representative Ruby: Was there any discussion as to why they didn't bring amendments to the house side?

Senator Nodland: I don't recall that.

Senator Larsen: The only thing that comes to mind is the example that the clearinghouse brought to us and that was if they do a wire non-refundable transfer at 8 o'clock in the morning, by 2 in the afternoon, they know that that is a good fund. On occasion, they would get some funds at 3 o'clock in the afternoon and on Friday, that money would not actually be in the account until Monday and there would be a gap.

Senator Nodland: But Friday seems to be a tremendous amount of closings, that's puts the pressure on the abstract company and that's exactly one of the problems.

Chairman Kreun: Years ago, floating was an accepted practice, but with electronic transfers, there is almost zero float. That becomes the responsibility of the abstract or the closing company. Any other questions? One of the questions, in talking with an agent, is in D & E, if we were looking at commercial, will it be enough. Higher than \$3,000 and the \$10,000, if we are looking at commercial transactions, they were questioning if that limit is high enough. They commented that this is a good bill. The two amendments are applicable in my opinion.

Representative Ruby: Move for the House to Accede to the Senate Amendments.

Senator Nodland: Second.

Representative Kreun: Further discussion?

Roll call was taken for the House to Accede to the Senate Amendments on HB 1421.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Industry, Business and Labor

Bill/Resolution No. 1421 as (re) engrossed

Date: April 4, 2011

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJSJ page(s) 1106

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep Ruby Seconded by: Rep Nodland

Representatives				Yes	No	Senators				Yes	No
Chairman Krewen	✓			✓		Sen Nodland	✓			✓	
Rep Ruby	✓			✓		Sen Larsen	✓			✓	
Rep Amerman	✓			✓		Sen Schneider	✓			✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Krewen Senate Carrier Rep Nodland

LC Number 11.0348.03001 . 04000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1421, as engrossed: Your conference committee (Sens. Nodland, Larsen, Schneider and Reps. Kreun, Ruby, Amerman) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1106 and place HB 1421 on the Seventh order.

Engrossed HB 1421 was placed on the Seventh order of business on the calendar.

HOUSE BILL NO. 1421

My name is Howard Malloy and I am the chair of the legislative committee of the North Dakota Land Title Association. I am here to testify on behalf of the North Dakota Land Title Association in support of House Bill No. 1421.

Members of the North Dakota Land Title Association are title and abstract companies in the State of North Dakota that conduct the vast majority of all real estate closings in the state. As such, we are in favor of a statute that requires funds presented for closings of real estate transactions to be "good funds" as defined in House Bill No. 1421.

North Dakota is what would be called a "table funding" state, in which all funds for a real estate transaction are collected and disbursed at the time of closing at the closing "table". The funds normally received at a real estate transaction are loan funds, buyer's funds, and Realtor earnest money funds. Funds normally disbursed at closing are seller's proceeds, loan payoffs, Realtor commissions, title company fees, attorney fees, taxes, etc. Because funds are disbursed at the table at the same time funds are received at the table, the funds received at the table are not deposited until after the closing and after all funds from the transaction are disbursed. The problems with this procedure are:

1. The checks issued at closing are not supported by funds collected in the escrow account from which they are drawn;

2011 TESTIMONY

HB 1421

2. The checks issued at closing can be and are presented for payment prior to collection (receipt by bank) of the deposited funds in the escrow account or even prior to the deposit of said funds in the escrow account.
3. Checks presented for payment which are not supported by collected funds in the escrow account are subject to what is referred to as "float". Normal banking procedure is to charge the account owner an interest charge for the float, which can result in fees to the escrow account holder of thousands of dollars on an annual basis. The more closings that are performed, the more checks issued that are not supported by collected funds in the account, the higher the float and the higher the interest expense.
4. Since escrow account deposits are often collected after escrow account checks are presented for payment, other funds in the escrow account, from other real estate transactions, are used to pay the checks drawn on the account. This commingling of funds would appear to be a violation of the fiduciary responsibility of the escrow account owner to only make disbursements from the funds of the parties to the transaction. Under the current table funding system, it is impossible to have funds from a specific transaction collected in the escrow account to cover the checks disbursed for that transaction and presented for payment to the escrow account.
5. Cashiers and certified checks are currently used as the source of funds from lenders and buyers. Neither cashier and/or certified checks are considered collected upon deposit. Both are treated just as personal checks by banks and are subject to clearance just like a personal check. Both cashiers and certified

checks can be cancelled after issuance, so there is no guarantee that the checks are good. Both cashiers and certified checks are subject to fraud. Many cases of forged bank cashiers and certified checks have been reported and are done so for the purpose of using at a real estate transaction.

6. Many lenders use “revocable” wired funds, which are subject to certain closing conditions being met before the funds are released and can be collected in the escrow account. Because of bank failures and other financial hardships in the lending industry, a significant risk is assumed by a closing company relying on these funds. Only if the wired funds are “irrevocable” can the closing company and the other parties to the transaction be confident that these funds are collected and available for disbursement.
7. Closers of real estate transactions have an obligation to the consumer, both the buyer and seller that the funds disbursed at closing under the instruction of the buyer and seller are good funds. Closing companies are also obligated to the consumer to be capable of performing all duties which the buyer and seller have instructed the companies to perform, which includes disbursing funds at closing, which ultimately requires that those funds be “good” funds.

From my research it appears 32 other states have “good funds” laws, including our neighbors Minnesota and Montana. This number will likely continue to increase as other state legislatures consider the risk to the general public from the practice of disbursing funds from a real estate transaction which are not yet collected funds in the escrow accounts upon which they are drawn. To the members of the North Dakota Land Title

Association it just seems common sense that we actually have the money we are spending in a real estate closing transaction.

On behalf of the members of the North Dakota Land Title Association, I respectfully request the committee issue a "do pass" recommendation on House Bill 1421.

Submitted by

Howard L. Malloy
Chair, Legislative Committee
North Dakota Land Title Association

HOUSE BILL NO. 1421

Chairman Klein, Members of the Committee, my name is Erin Schmitz and I am Vice President of North Dakota Guaranty and Title Company which has offices in eight counties all located in Western North Dakota. I am here today to testify on behalf of the North Dakota Land Title Association in support of House Bill No. 1421.

Members of the North Dakota Land Title Association are title and abstract companies in the State of North Dakota which conduct the vast majority of all real estate closings in the state. As such, we are in favor of a statute that requires funds presented for closings of real estate transactions to be "good funds" as defined in House Bill No. 1421.

North Dakota is what would be called a "table funding" state, in which all funds for a real estate transaction are collected and disbursed at the time of closing, at the closing "table". Funds normally disbursed at closing are seller's proceeds, loan payoffs, Realtor commissions, title company fees, attorney fees, taxes, etc. Because funds are disbursed at the table at the same time funds are received at the table, the funds received at the table are not deposited until after the closing and after all funds from the transaction are disbursed. The problems with this procedure are:

1. The checks issued at closing are not supported by funds collected in the escrow account from which they are drawn;

2. The checks issued at closing are usually presented for payment prior to the deposited funds being collected in the escrow account or even prior to the deposit of said funds in the escrow account.
3. Checks presented for payment which are not supported by collected funds in the escrow account are subject to what is referred to as "float". Normal banking procedure is to charge the account owner an interest charge for the float, which can result in fees to the escrow account holder of thousands of dollars on an annual basis. The more closings that are performed, the more checks issued that are not supported by collected funds in the account, the higher the float and the higher the interest expense.
4. Since escrow account deposits are often collected after escrow account checks are presented for payment, other funds in the escrow account from other real estate transactions, are used to pay the checks drawn on the account. This comingling of funds would appear to be a violation of the fiduciary responsibility of the escrow account owner to only make disbursements from the funds of the parties to the transaction. Under the current table funding system, it is impossible to have funds from a specific transaction collected in the escrow account to cover the checks disbursed for that transaction and presented for payment to the escrow account.
5. Cashiers and certified checks are currently used as the source of funds from lenders and buyers. Neither cashier and/or certified checks are considered collected upon deposit. Both are treated just as personal checks by banks and are subject to clearance just like a personal check. Both cashiers and certified

checks can be cancelled after issuance, so there is no guarantee that the checks are good. Both cashiers and certified checks are subject to fraud. Many cases of forged bank cashiers and certified checks have been reported and are done so for the purpose of using at a real estate transaction.

6. Many lenders use “revocable” wired funds, which are subject to certain closing conditions being met before the funds are released and can be collected in the escrow account. Because of bank failures and other financial hardships in the lending industry, a significant risk is assumed by a closing company relying on these funds. Only if the wired funds are “irrevocable” can the closing company and the other parties to the transaction be confident that these funds are collected and available for disbursement.
7. Closers of real estate transactions have an obligation to the consumer, both the buyer and seller that the funds disbursed at closing under the instruction of the buyer and seller are good funds. Closing companies are also obligated to the consumer to be capable of performing all duties which the buyer and seller have instructed the companies to perform, which includes disbursing funds at closing, which ultimately requires that those funds be “good” funds.

From my research it appears 32 other states have “good funds” laws, including our neighbors Minnesota and Montana. This number will likely increase as at least 10 state legislatures are considering a “Good Funds” Statute this Legislative Session. To the members of the North Dakota Land Title Association it just seems common sense that we actually have the money we are spending in a real estate closing transaction.

We would like to present 2 amendments to this Bill, shown under Section 3, as items "E" and "F".

- On behalf of the members of the North Dakota Land Title Association, I respectfully request the committee issue a "do pass" recommendation on House Bill 1421.

Submitted by

Erin Schmitz
Education Committee
North Dakota Land Title Association

Amendments to HB 1421 to the Senate IBL committee March 14, 2011

On page two after line 10 insert the following language:

e. A cashier's check(s) not to exceed ten thousand dollars in the aggregate that is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States.

f. A check drawn on the escrow account of another closing agent, if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction.

House Bill No. 1421

My name is Peggy (Margaret) Palmes. I am a member of the North Dakota Land Title Association, the American Land Title Association and current manage 2 title/abstract/closing/escrow offices in North Dakota. I have been in the title, abstract, closing, escrow business since 1986. I am in support of House Bill No 1421.

This bill is necessary to protect the consumer. It is the consumer, the general public, the buyers and sellers, who rely on those of us in the industry to insure that their transaction is funded prior to our disbursing or 'spending' the money involved in the transaction.

It has become apparent in recent years that there are title/escrow/closing companies in North Dakota that disburse funds prior to securing good funds. While this is against the underwriter and errors and omissions regulations, it does NOT protect the consumer from damages suffered. House Bill No 1421 will give the consumer legal protection against these practices.

There are 4 major title insurance underwriters in the United States. All four require their title insurance agents (anyone issuing title insurance) to abide by the 'good funds' rules. By their definition, in part, the good funds rules require that funds may not be disbursed from an escrow account in connection with real estate transactions unless funds have been deposited into said escrow account. They further define good funds as funds that '...cannot be recalled by the funding party/lender.'

When funds are disbursed without first having 'good funds' on deposit, the disbursing company is essentially using other people's money to fund the transaction. For example, disbursing funds to a seller of a property prior to having good funds runs the risk of the seller not being paid

In the past few years just over 400 lending institutions have been closed, usually without more than a moment's notice, leaving many at the closing table without funds to complete the closing transaction. This has happened as recently as 2010 in Fargo, ND.

I respectfully request the committee to issue a 'do pass' recommendation on House Bill 1421.

Apr 4, 2011
Senator Larsen

HB 1421

Relating to good funds for real estate transactions.

This bill discusses the way funds and money are transferred during the sale of real-estate.

In our state we are what is called a table funding state in which all funds for real estate transactions are collected and distributed at the time of closing at the closing table.

At the time of closing the realtor and the buyer go to the abstract office to finalize all the paperwork and fund transfers.

Some Senators may remember writing a personal check for a real estate transaction. Cashiers checks used to be good as gold. Now we have what wire transfers. *The cashiers check has to not exceed \$10,000.*

These Abstract/title companies are the middle men between the realtor the bank and the buyer so they are taking all the risk and labor in making this a smooth process. *They have to assume its going to be good.*

This bill is necessary to protect all parties who rely on these funds to insure that the transaction is funded prior to our disbursing or spending the money involved in the transaction.