

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1316

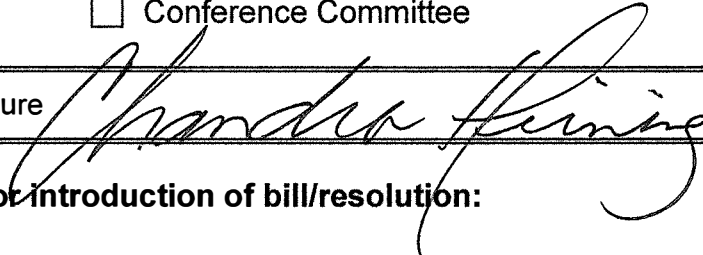
2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316
January 23, 2013
Job 17653

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

Attached testimony 1-12

Hearing opened by Chairman Keiser

Representative Louser, District 5, Minot: I am here discussing HB 1316 relating to the good funds law which was passed last session. Provided background information. In the last session when this bill was passed, the Association of Realtors was neutral on the bill but then has monitored how this bill impacted business across the state.

Support:

2:45 **Claus Lembke, North Dakota Association of Realtors, Political Affairs Director:** Refer to written testimony, attachment 1. Elaborated on written testimony about cashier's checks through minute 5:48 on recording. Provided supplemental information, attachment 2. Elaborated on written testimony regarding page 2, lines 14-18; page 3, lines 3 and 4; and page 3, lines 4 to 6.

7:30 **Chairman Keiser:** When we passed this last session, didn't you guys ask for these limits?

Claus Lembke: We supported it at first, but then we got cold feet because it was doing some of the things we did not want it to do, and then we opposed it. But then our good friends convinced us to do nothing, and we stayed neutral. We feel now that we should not have let it go but should have fixed it at the time.

8:30 **Diana Zietz, Immediate Past President of North Dakota Association of Realtors:** Provided attachment 3. Spoke about funds from trust account checks, the 3-day holding requirement, earnest money, and closing dates for home purchases. The current way is hurting consumers.

12:14 **Chairman Keiser:** At the time of closing, how do we insure that the seller is receiving good funds?

Diana Zietz: In my opinion, if it is a loan, the lender is verifying that the funds are in the buyer's account. If the funds are not there, they would not approve the loan. The lender is verifying that the cash is there or they won't get financed.

13:25 **Chairman Keiser:** Have there been cases in the last year where a bad deal has happened, that good funds have not happened?

Diana Zietz: Not to my knowledge.

13:48 **Claus Lembke:** Provided letter from Joe Sheehan, Vice President Mortgage at Cornerstone Bank, attachment 4. I forgot to talk about a broker's trust account. If there were to be no funds and the check came back, there is a research and recovery fund they can collect. The realtor would be out of business if that fund is ever attached. There is recourse if there were not funds for the check.

14:40 **Greg Larson, Vice President of the North Dakota Association of Realtors:** Refer to written testimony, attachment 5.

17:15 **Representative Amerman:** The law we passed last session is not being followed by a number of institutions. So are we now passing a law so that they are not breaking the law?

17:45 **Greg Larson:** We talked about options, including repealing the law. What seemed to make sense was to change a couple of definitions so that practices that are currently being used are legal, and that would solve the problem. We could ask you to add teeth to the bill, but we do not want to punish anyone. We want to remain on good terms because we work together on a daily basis. It seems like the best non-aggressive solution to make the law work.

18:40 **Representative Kasper:** With how busy the banks are now, would it help to put the emergency clause on this bill?

Greg Larson: Yes.

19:05 **Chairman Keiser:** Why is the law saying United States currency is good funds, but some banks are saying cash is not good funds?

Greg Larson: The law does say currency is good funds. However, the title companies do not have vaults, etcetera. They want to restrict the amount of cash they want their employees to be responsible for.

20:27 **Dave Ludwig, board member of the Independent Community of Banks of North Dakota:** Provided attachment 6. Elaborated on written testimony. Spoke about wait time between closing date and the request for a pay-off, when the extra days of drawing interest become a factor. We took the position that if the title company needs more time to do their work, they should take the extra days but not put it back on us to give a refund because of the extra days. If they want to take extra days, we want to disclose to the seller or to the

person refinancing on the closing statement so that they know that there are a couple days of interest built in there. Then they can deal with it at the closing table.

22:14 **Doreen Redmond, executive officer for the Association of Builders:** Our government affairs committee has looked at this bill and heartily supports it.

22:44 **Marilyn Foss, North Dakota Bankers Association:** We do not object to this bill.

Opposition:

23:45 **Nick Hacker, North Dakota Land Title Association Legislative Committee Chair:** Provided attachments 7, 8, and 9. Refer to written testimony, attachment 7. Drew attention to attachment 8, examples of fraudulent or counterfeit cashier's checks. Drew attention to attachment 9 regarding the First State Bank of Munich.

36:10 When someone is not abiding by the law, it is likely because the law has no teeth. We are okay with the last clause. The settlement statement or HUD can bring with it a host of issues. To work up a settlement statement, we need loan instructions from the lender. If we cannot get the loan instructions in a timely manner, we cannot work up the HUD. We have no problem with presenting the pay-off and the amount of interest in days as required on the last page of the bill. The real difference is that we follow RESPA when we present closing documents.

37:26 **Representative Kasper:** Can you explain where the problem or liability or loss comes to the title company. Maybe give a transactional example with which you're familiar.

37:51 **Nick Hacker:** When someone brings a large cashier's check to a closing, this bill would state that those are good funds for the transaction. If that cashier's check is fraudulent and we go to deposit it the same day we wire funds to the seller, and then check comes back, those are revocable funds. The bank is going to take those funds out of my escrow account as if they were never really there, and everyone else's funds in that escrow account has already been wired out and is now gone. Wired funds are not revocable.

Chairman Keiser: The previous testimony said that the title company could be more restrictive if desired and could set their own standards.

39:10 **Nick Hacker:** It's the nature of the beast. There is a consumer protection reason for good funds. That's really what this is about, making sure the funds are in that escrow account to fund the transaction. The moment there is an agent defalcation, everyone loses their money. Those down payments, those earnest money checks, and potentially loan funds are gone. The other one is a level playing field. Some other company may try to gouge for business based on the fact that they are going to accept funds which are maybe questionable. When one company is doing that and the other company is not, it potentially anti-competitive in nature. This is about making sure everyone plays ball the same way to ensure that the consumer is protected.

40:21 **Chairman Keiser:** What's really happening in the marketplace is what is in this bill. Is that true? If that is true and we will maintain the law, we'll have to put teeth in it.

Nick Hacker: It's really the baby and the bathwater. We do not need to throw out the law, but we do need to make improvements in it. We would appreciate teeth in the law. We can work with most of what we had. In the past legislative session, there was some discussion regarding funds from a broker's escrow account. That was introduced by the real estate community; we didn't introduce that.

41:38 Representative Frantsvog: Are you saying you want teeth in the existing law or in the proposed legislation?

Nick Hacker: We oppose the legislation as is because it removes the caps on the amount of money that can be sent for a closing the day of the closing, more or less. In addition, we do need teeth in the law.

42:05 Representative Beadle: Referred to Nick Hacker's testimony. Were most of the fraudulent checks personal checks, or were they cashier's checks?

Nick Hacker: The majority of the bad checks are personal checks.

42:20 Representative Beadle: You gave an example of the Bank of Munich. Note the notification date of May 13, 2010. Has this been a recent problem in North Dakota, or have the industry standards for cashier's checks over the past few years started to drive out some of the fraudulent nature?

42:48 Nick Hacker: Our industry operates on the idea that we try to reduce risk as much as possible. On the title insurance side, we do have a low claims ratio, but those claims are catastrophic in nature. It takes a lot of reserves for us to be able to handle those claims. The fear is not the number of fraudulent checks but the size of the checks. That would be the very same on the settlement escrow side, which we cannot provide insurance to. We have had fraudulent checks in the state of North Dakota within the last year.

45:00 Paula Bachmeier, president of the North Dakota Land Title Association and senior vice president manager of Minot Guaranty and Escrow: Provided attachments 10 and 11. Attachment 10 is a cashier's check written on a Citibank account for \$228,000. In good faith, we worked with a realtor on this transaction, accepted the funds, and deposited them into our escrow account. The transaction failed to close because shortly before closing, the buyer chose not to purchase the property. He requested that the amount of the check be refunded by wire, which we did. Attachment 11 shows that the submitted check was fraudulent. We immediately contacted our bank, and the Bank of North Dakota was involved because the wire through them. To our dismay, we were unable to recover any of those funds. Described the impact on her company. A key issue is comingled funds. When you give me a cashier's check and I'm supposed to give the seller a cashier's check, I am not giving them your funds. When I give a seller the cashier's check, I am giving them someone else's funds. The money, by law, that we're supposed to hand out are funds that are collected. They are not comingled because we are insured on each account individually. The point of the law is to make sure that we have those good funds in our account so that when someone gets that money, it is actually their money and

not someone else's money. Help protect the consumer and the main street businesses in your communities.

48:20 Representative Beadle: Was this \$228,000 a full payment for a real estate transaction?

Paula Bachmeier: It was for the purchase of \$225,000, and the purchaser, who was in England, said the extra money was to cover the closing costs.

Representative Beadle: The date of the check is October 20, 2011, and the law passed during the last legislation session would have been in effect.

Paula Bachmeier: The point is to minimize the effect. It happened to us with the law in effect. What if you take the law away?

49:20 Representative Kasper: The current law, page 2 beginning with line 11, limits the aggregated amount of a cashier's check considered good funds \$10,000. This was way above \$10,000 in aggregate.

Paula Bachmeier: It was deposited in my account for about seven days before.

Representative Kasper: Why did it take over seven days for you to get notified?

Paula Bachmeier: It could take up to sixty days to collect on a cashier's check. We learned from our bank that it would take up to sixty days for them to trace a counterfeit cashier's check.

Representative Kasper: Even if we keep the law on the books, you still have a big risk. How can you minimize your risks?

50:45 Paula Bachmeier: That was our discussion, too. It was during the law's time. At least we can demand the cashier's check, and now we have since learned that we can double check. The issue here was when we were sending the wire out, the money had been in our account twenty-some days, and we had no idea it would not have been collected by then. Our policy now is that before any wire goes out, we verify that the funds have been collected in the bank. The difference is between good funds and collected funds.

51:30 Tim Pearson, president of North Dakota Guaranty and Title Company and a representative from the American Land Title Association: Provided attachment 12, a letter of testimony from Bill Burding, a member of board of governors of the American Land Title Association. Provided background on Bill Burding. Summarized conversation he had had with Bill Burding and highlighted content of Bill Burding's written testimony. (53:19) This is not an occurrence just once in a while. It occurs for hundreds of millions of dollars per year. Burding is writing this letter to share what he has dealt with personally over his career.

54:20 It is an important fact to remember that in today's society, everything is geared to safeguard the protection of people's funds. Most of the companies that belong to the ND Land Title Association cannot absorb that amount of loss. The good funds law does not to be gutted to say that we can take whatever funds whenever. It does need to have some teeth put into it. We can do some things, too. Do you know for a period of time that a cashier's check is good? No. One of the good things we could do would be to add teeth so that it has to be followed and to make it a level playing field. Secondly, is it possible that we can make it to get it in within a period of time that will give the banks the majority of time to make sure the funds are good and are collected, or change it to a wire statute? This is fundamentally important to all of us and to our customers.

57:49 **Howard Malloy, president of Bismarck Title Company:** No prepared testimony but happy to answer questions.

57:01 **Representative Becker:** In the e-mail you sent me, you referred to the North Dakota Century Code, 6-08-16, where a person is prohibited from issuing a check without having funds in an account. Could you elaborate?

Howard Malloy: Summarizes statute. My concern is that the change in this bill would change the statute in such a manner that we would have to accept funds and write checks on them through the disbursement process of real estate closing before the funds are collected.

58:00 **Representative M. Nelson:** Someone referred earlier to an escrow state. What is the difference between what we're doing in this state and an escrow state?

Howard Malloy: We are what is called a wet funding state. The money comes in, and the money goes out. In an escrow state, things are collected and held into escrow. The earnest money would come in, the buyer's funds would come in, the mortgage would come in. The documents would all be held into an escrow. The closing might happen at some future date. All the documents are signed and the funds are put into an escrow, and then after the documents are recorded and everything clears, at that point the funds are disbursed out of the escrow. It's a much more controlled process, less chaotic than what we have on a daily basis here, but it is a longer process and costs more money.

59:34 **Representative Beadle:** You mentioned that if we repeal this law, it could open a host of problems. How did your firm operate before this law came into effect?

Howard Malloy: We brought forth this law because we were concerned with the way we were operating. We thought it was necessary to bring a statute that we all would have to follow which would protect us and the consumer.

Neutral:

Hearing closed.

1:00:45 **Chairman Keiser:** We need all sides to work together. What we need to do is get the parties at a table and discuss what we can do with this concept. I do not want to see

the title companies evolving to the position that they say they are waiting until cashier's checks clear, even if it takes sixty days. With that length of time, we'd have realtors unhappy, along with the parties involved in the sale. On the other hand, I need the title companies to come up with solutions that will work in this who deal.

Chairman Keiser appointed Representative Sukut, Representative Ruby, Representative Boschee as a subcommittee.

Chairman Keiser: If you want to be attend the discussions of the subcommittee and participate, please give your phone number or email address to our clerk, and you will be notified when they will meet. I would appreciate a sincere effort to make this work so that it will be a better process. Representative Sukut will be chairing the subcommittee.

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316
January 28, 2013
Job 17791 (starting at minute 2:52)
Recording begins with HB 1294

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

No attachments

2:52 **Representative Sukut** gave an about HB 1316. The parties met after our hearing and were unable to come to a compromise. The subcommittee will be meeting this afternoon.

Chairman Keiser: The realtors are going ask for us to repeal the law as written. That is clearly an option. The bill as it sits is not going to be able to go forward. This is policy question, and sometimes when the two sides cannot work out a compromise, the legislature takes over, and the committee does its work and comes to a conclusion. What I do know is that we need transactions to go forward. The one complaint I get from constituents when they try to buy or sell a house is that they cannot get an appraiser and they cannot get a loan finalized, and it's taking too long.

Representative Sukut: There are apparently a number of people at closing who are ignoring the law. If the check is larger than what the law allows but they know the people and know that the check is good, they run it through. They are ignoring the law. That would imply that we need to do something.

Representative Boschee: I was contacted by a number of realtors this weekend and got the heads up that they are looking to repeal. I plan to call our title company in Fargo to ask some questions. It sounds like this is coming out of the unfortunate incident that happened in Minot and that organization not having their own internal controls. It sounds like even the title companies are not in complete agreement with what is coming forward. They feel business is good as usual and even before.

Representative Kreun: Can we pass a law for every transaction that takes place? There are so many varied transactions that can take place. We'd muddy the waters by trying to monitor this continuously. I don't have the answer, but I do think that if they have their own internal policies, they should be following them.

Representative Beadle: I might have a biased slant to this because I am a realtor. I work with realtors and title companies. In my area, one does not follow it right now because they did not consider it a problem to begin with, and the law became one more level of hierarchy. One title company in particular which is an affiliate of someone who gave testimony does not follow it either, so even within a company there are differences on whether we need it or not. The sentiment I've received is that last session, we drastically overcorrected.

Representative Vigesaa: My wife works in a bank. They never trust a cashier's check. When they get one from another institution, they always call to verify. You cannot legislate a company to do their due diligence.

Chairman Keiser: I never knew what the term good funds meant. Now I discovered that good funds are not necessarily good funds.

Audio unclear.

Representative Kreun: The only way would be to change to an escrow state so that all money and documents are in before the closing.

Chairman Keiser: How many states have that? I do have to say that I always thought a cashier's check was good.

Representative Beadle: Audio unclear.

Chairman Keiser: Can they lock that money up when they call?

Representative Beadle: Audio unclear.

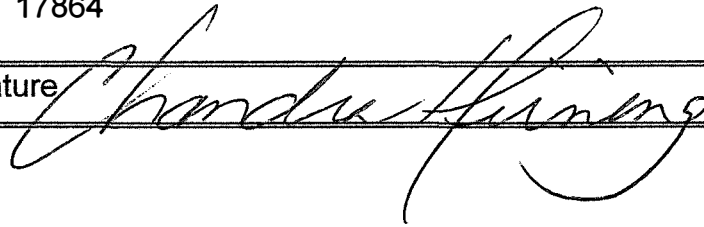
2013 General Discussion
(Check appropriate box)

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date of meeting/discussion: January 28, 2013

Recorder Job Number: 17864

Committee Clerk Signature



Minutes:

Subcommittee for HB 1316

Representative Sukut called subcommittee meeting to order.

The three subcommittee members are present:

Representative Boschee, Representative Ruby, Representative Sukut

Others present:

Nick Hacker, North Dakota Land Title Association
Paula Bachmeier, North Dakota Land Title Association; Minot Guaranty and Escrow
Erin Schmitz, North Dakota Land Title Association
Jack MacDonald, Independent Community of Banks for North Dakota
David Ludwig, Independent Community of Banks for North Dakota
Marilyn Foss, North Dakota Bankers Association
David Mason, Independent Community of Banks for North Dakota
Jerry Schlosser, North Dakota Association of Realtors
Claus Lembke, North Dakota Association of Realtors

Representative Sukut: If we as a subcommittee cannot come up with a solution, it will go back to committee. The committee may kill the bill or may repeal the law or may pass the bill the way it is. If we cannot come up with an amendment that works, that is where we will end up.

Claus Lembke: Met with several others to hear their proposed idea, and then shared their proposals with others later in the week during a conference call. Land Title Association proposed the following changes.

- Cashiers between \$10,000 and \$50,000 need to be deposited and collected
- Over \$50,000, must be in non-revocable wires
- Checks from brokers trust account, \$10,000 limit
- \$5000 fine for each violation

On Friday conference call, political affairs committee did not understand why we're going back to limitations. All can be handled by policy. But it appears that they cannot all do the same policy; that would be anti-trust.

Our position is a) repeal the good funds law or b) pass the bill as it is. The rest can be done by policy.

He called 10 title companies in Fargo and Grand Forks and spoke to managers or owners. Five said they would support repeal because they are afraid of the penalty; they want to be able to make exceptions.

We think the bill was already a compromise.

Nick Hacker: Chairman Keiser asked us to come up with ideas to make this statute (the existing statute) more workable. We tried to do that rather than to amend the bill in front of the committee. We would like to find a middle ground between the current statute and the proposed bill. The issue for us is not the broker's checks. If \$10,000 doesn't work, does \$20,000? Where we have no confidence is with amounts of \$50,000 or more when funds are non-revocable. We are a very competitive industry--price, speed to market, quality of title product. We do not believe we should be competitive in how we handle other people's money in a trust account. With very large cashier's checks, we have tried to call to verify. Very large national banks may not have a central number, somewhere for me to reach out to. Because we are a table-funding state and wet funding, I am expected to wire out the proceeds right away. We're talking about the risk to the title agency. We need decent public policy to set guidance.

When we proposed on the cashier's check, \$10,000 up to the date of closing--that has never been brought to us as a point of concern. The only concern brought to us has been broker's checks, and we're confident in those. We get nervous when we're dealing with developers who are not from around here. Maybe the funds need to be wired here instead.

We proposed ideas. Maybe the response we received was a little different than what we're hearing today.

Representative Sukut: So you do not have a problem with broker's checks. If there was to be legislation or something put in Century Code that required an amount over \$50,000 to be wired, would you see that as a potential way to work with that part of it?

Nick Hacker: The reason we discussed putting a limit on this area was that sometimes someone would issue a cashier's check to a broker, and the broker would issue a check. Most very large transactions do not contain a realtor; most contain an attorney. Most very large transactions are wired. What we're talking about is cash to close. How do we make sure the very large amounts that show up on the day of closing as a cashier's check are good funds?

Representative Boschee: Why not always use wire, if it's more secure?

Nick Hacker: In developed markets, wires are more common. In rural areas or in the western part of the state, we see more cashier's checks. We should go to public policy to say that those funds are non-revocable.

Representative Ruby: If we decide to repeal the law, can you put those limits on as a policy?

Nick Hacker: In my practice, yes. Does it stop others from coming in with a customer-based mindset who come in to steal? It does not. We are a competitive market. There is a reason we are here: to protect the public.

Representative Sukut: If we were to change the definition of good funds... We obviously have a problem with cashier's funds. If we were to eliminate cashier's funds, to put in a limit with broker's checks, and put in wireless... If we made it all wireless, it would solve the problem all the way around. Is there some merit to that?

Nick Hacker: In a perfect world, all forms of payment would come in wire form. We understand there is a need for some flexibility. We would be agreeable to a wire requirement.

Claus Lembke: We are concerned with a broker's check for \$50,000 if there are multiple checks given in a single day. We would not object to language that says any money cleared in a broker's account; that would be safety. If they do not have that, they'd lose their license.

Representative Sukut: What's the process to make sure the broker's account is clear, that it has enough money in it?

Claus Lembke: Answered question.

Claus Lembke: We're less concerned about dollar amounts; more concerned that funds are there. Our concern is still with cashier's checks. We'd be fine with not having a limit on broker's checks as long as there is sufficient money in the account.

Representative Sukut: You're thinking that if it were a cashier's check up to 50,000, that's something the title companies could work with. Above that would have to be wired.

Nick Hacker: Yes.

Jerry Schlosser: A couple of points made our meeting on Friday confusing. The 10,000 earnest money received from the broker's trust account. Today I heard that they are not concerned about that kind of check, but yet they're putting a limit on it. In one way, it's good for me because it limits my liability. But that does not help the public or solve the problem. The 50000 that could be received in the form of a cashier's check-- received and collected, what is the purpose for a maximum? If it's 500,000 and received and collected, does it matter what the maximum is? T adds to my confusion as to the purpose of the bill. The strong feelings of the people on the call on Friday was that it should be repealed.

Representative Sukut: It sounds like there'd be agreement to moving the limits to the broker's account checks as long as the amounts were there. You made a comment that you were not so concerned about the money in the broker's account but rather the The problem for the public.

Jerry Schlosser: The problem we're running into is the timing, that the closing is delayed.

Representative Sukut: If we just did wireless, it would all push along. But I don't know that that is realistic.

Jerry Schlosser: It's another \$20 in fees

Representative Boschee: Help me understand a cashier's check. Explained his understanding.

David Mason: On a cashier's check, the banker draws them out of a person's account and then written out of the bank's account. The problem has to do more with fraudulent checks than it does with insufficiency of funds. One thing that was mentioned before is that the way the good funds law is written now, there is not a way for a title company to move funds into a seller's account within the same institution.

With wire transfers, a lot of people think that the money is instant. It goes through the Federal Reserve. It is not instantaneously.

Nick Hacker: We agreed to the ability to move within an institution.

Representative Boschee: So if we're talking about two concerns: Being consumer friendly, and mitigating risk for title companies. We've thrown around the amount of

\$50,000. On the realtor's side, is that reasonable? How will it impact efficiency with customer service?

Jerry Schlosser: It would improve efficiency with customer service.

Representative Ruby: It seems to me that the agreement is in the transfer of funds and in the broker's funds. The remaining issue is the cashier's check. If we set a dollar amount, how long will that be a sufficient benchmark? If we repeal the law, it's all gone and it's back to square one.

Claus Lembke: We'd have a problem with the \$5000 penalty. Sometimes there is some flexibility for the benefit of the customer.

Representative Sukut: Question

Nick Hacker: The penalty would not apply to the realtor.

Claus Lembke: The companies in the valley were concerned with the penalty.

Representative Ruby: Was that in their proposed amendments?

Claus Lembke says yes; Nick Hacker says no.

Nick Hacker: By not having a penalty, we'll still have the same problem as we do today. Most companies do not have a problem with the penalty because they do not skirt the law. The \$50,000 requirement is a broadening of the law. This is not going to infect the average consumer.

Representative Ruby: I'd like to see the amendment offered which we could look at. Something which could be applied to the current bill as a clean up. I'd like to see an amendment or draft so we could compare.

Nick Hacker: I'd have no problem drafting the language. We've involved quite a ways during this meeting compared to where we had been last week.

Representative Ruby: This is another option, to change and amend the current bill.

Representative Sukut: Please put together something we can see. We are still sitting with the certified check and cashier's check and what to do with those, but if we could at least come a few steps closer, that would help.

Nick Hacker: Maybe by Wednesday?

Representative Sukut: We'll meet again about 4:15 or 4:30, this Wednesday.

Subcommittee meeting adjourned.

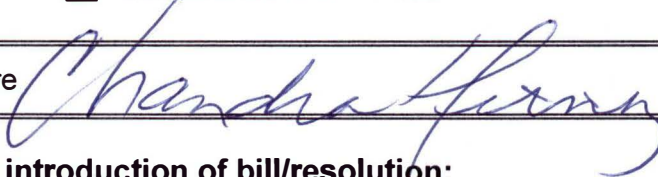
2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316 subcommittee
January 30, 2013
Job 18040

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

You may make reference to "attached testimony."

Subcommittee

Meeting location: Peace Garden Room

Meeting called to order at 4:27 pm

Subcommittee members present:

Representative Sukut (chair), Representative Ruby, Representative Boschee

Others present: Registration form attached

Topics discussed:

1. Proposed amendments explained by Nick Hacker (Attachment 1)
2. Proposed penalty
 - a. Implementation, enforcement, oversight, and regulation
 - b. Necessity of penalty
 - c. Opposition to penalty
3. Potential changes regarding penalty
4. Consumer Financial Protection Bureau regulations and potential change
5. E-mails shared by Claus Lembke (Attachment 2) especially pertaining to closing protection letter
6. Technical corrections
7. Attorneys' trust accounts

Next subcommittee meeting is Monday, February 4, 2013, at 4:15

Meeting adjourned at 5:23 pm

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316 Subcommittee
February 4, 2013
Job 18250

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

Attachment 1

Meeting location: Peace Garden Room

Meeting called to order at 4:13

Subcommittee members present:

Representative Sukut (chair), Representative Ruby, Representative Boschee

Additional committee members present:

Chairman Keiser, Representative Louser

Others present: Claus Lembke, Nick Hacker (others did not sign registration sheet)

Topics discussed:

1. Review of proposed amendments, attachment 1
 - a. Collected funds defined
 - b. Page 2, line 2, that funds must be collected, not simply received
 - c. Page 2, line 10, dealing with attorney's trust account or real estate broker's trust account; remove cap on the funds presented at closing through those accounts
 - d. Page 2, line 13. Put a period after *state* and remove the rest of the wording on the amendment. The language in the amendment as now would be restrictive.
 - e. Page 2, line 18, insertion regarding accounts as same institution.
 - f. Section 3, civil damages charge in a complaint filed with the court.
2. Risk to funds in trust accounts, operating budget
3. Additional change requested to create 47-34-03 regarding disclosures
4. Civil damages; realtors will continue to discuss this evening
5. \$50,000 amount appears to be missing from the amendments under discussion

Meeting adjourned at 4:36

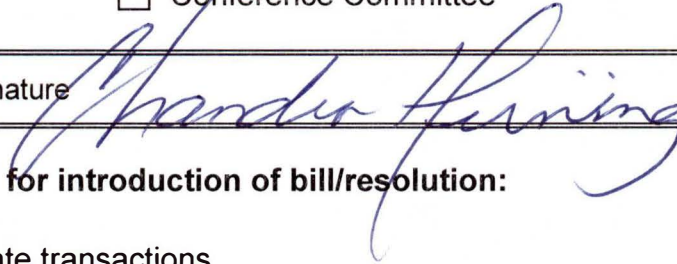
2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316 Subcommittee
February 5, 2013
Job 18272

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

Attachment 1

Meeting location: Peace Garden Room

Meeting called to order at 11:00

Subcommittee members present:

Representative Sukut (chair), Representative Ruby, Representative Boschee

Additional committee members present:

Representative Louser

Others present: Registration sheet attached

Topics discussed:

1. Overview of proposed amendments, 13.0635.01003 (attachment 1)
2. Support of Board of Directors of the North Dakota Board of Realtors
3. Support of Independent Community Banks of North Dakota
4. These amendments will be shared with the full IBL committee

Meeting adjourned at 11:10

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1316

February 5, 2013, afternoon

Job 18324

Recording contains committee action on various bills

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Good funds for real estate transactions

Minutes:

Attachment 1

Committee reconvened.

Representative Sukut: Presented proposed amendments, 13.0635.01003, attachment 1.

7:30 **Chairman Keiser:** With the proposed working to be inserted on page 2 after line 18, have we covered the field by naming those financial institutions? What about money management funds?

Nick Hacker: What we are talking about are agent's trust accounts, and those are always held in one of these types of institutions.

Representative Sukut: Resumed presentation of proposed amendments.

Representative Boschee made **motion to adopt amendment** 13.0635.01003. Seconded by Representative Louser

Representative Ruby made a **motion for a do pass as amended**. Representative Sukut seconded the motion.

Roll call vote. Motion to do pass as amended carries.

Yes = 14

No = 0

Absent = 1

Carrier: Representative Boschee

VK
2/5/13
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1316

Page 1, line 1, after "to" insert "create and enact two new sections to chapter 47-34 of the North Dakota Century Code, relating to good funds and disclosures for real estate transactions; and to"

Page 1, line 12, after "2." insert "\"Collected funds\" means a cash deposit or a check that has been presented for payment and for which payment has been irrevocably credited to the closing agent's escrow account.

3."

Page 1, line 19, overstrike "3." and insert immediately thereafter "4."

Page 2, line 2, overstrike "received" and insert immediately thereafter "collected"

Page 2, line 7, remove the overstrike over the overstruck comma

Page 2, line 10, after "~~escrow~~" insert "for which funds are collected funds by the real estate broker or the attorney's trust"

Page 2, line 10, remove the overstrike over "~~account~~"

Page 2, line 11, remove the overstrike over "~~not to exceed~~"

Page 2, line 11, after "~~ten~~" insert "fifty"

Page 2, line 11, remove the overstrike over "~~thousand dollars in the aggregate~~"

Page 2, line 11, overstrike "that" and insert immediately thereafter "which"

Page 2, line 11, after "is" insert "received by the closing agent and which is"

Page 2, line 13, after "States" insert "located in this state"

Page 2, after line 18, insert:

"g. Funds transferred to the closing agent's escrow account by the bank, savings and loan association, credit union, or savings bank that is the host institution of the closing agent's escrow account."

Page 2, line 19, overstrike "4." and insert immediately thereafter "5."

Page 3, line 4, remove "In a"

Page 3, replace lines 5 and 6 with:

"SECTION 3. A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

Disclosures.

In a prominent manner in the closing documents, a closing agent shall disclose the anticipated closing date and all of the dates through which any loan payoffs are calculated.

2082

SECTION 4. A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

Civil damages.

In addition to any other cause of action that may exist, a person may bring a cause of action against a person that violates section 47-34-02. In addition to any actual damages a plaintiff may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred dollars per violation in the first action. In any subsequent action for violation of section 47-34-02, a person is liable for one thousand dollars per violation."

Renumber accordingly

Date: 2-5-2013 pm

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1316**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0635.01003

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

Motion Made By Boschee Seconded By Louser

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Vote

Total Yes 14 No 1

Absent 1

Floor Assignment _____

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

Date: 2-5-13 pm

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1310**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13-0635-01003

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

Motion Made By Ruby Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson		ds
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Boschee

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

REPORT OF STANDING COMMITTEE

HB 1316: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1316 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact two new sections to chapter 47-34 of the North Dakota Century Code, relating to good funds and disclosures for real estate transactions; and to"

Page 1, line 12, after "2." insert ""Collected funds" means a cash deposit or a check that has been presented for payment and for which payment has been irrevocably credited to the closing agent's escrow account.

3."

Page 1, line 19, overstrike "3." and insert immediately thereafter "4."

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Disclosures.

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In addition to any other cause of action that may exist, a person may bring a cause of action against a person that violates section 47-34-02. In addition to any actual damages a plaintiff may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred dollars per violation in the first action. In any subsequent action for violation of section 47-34-02, a person is liable for one thousand dollars per violation."

Renumber accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1316

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1316
March 20, 2013
Job Number 20206

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to good funds and disclosures for real estate transactions

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Louser: Introduced the bill.

Greg Larson, Realtor Associate with Century 21 and Vice President and Political Affairs Chairman of North Dakota Association of Realtors: Written Testimony Attached (1).

Nick Hacker, North Dakota Land Title Association Legislative Committee Chair: Written Testimony Attached (2).

Discussion on the regulations of the industry (21:11-27:29)

Chad Novak, Vice President and Counsel, Old Republic National Title Insurance Company: In support of the bill. The Company is the third largest title insurance underwriter in the country, headquartered in Minneapolis. (27:40-30:00)

Tim Pearson, President of North Dakota Guaranty and Title Company: In support. (30:05-34:20)

Doreen Riedman, Executive Officer of the North Dakota Association of Builders: In support of the bill.

Chairman Klein: Said they would address the amendments given by Nick Hacker and also the additional line that Senator Sinner has proposed.

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1316
March 20, 2013
Job Number 20237

Conference Committee

Committee Clerk Signature

Eva Letell

Explanation or reason for introduction of bill/resolution:

Relating to good funds and disclosures for real estate transactions

Minutes:

Amendment and Vote

Chairman Klein: Opened the meeting.

Senator Laffen: Said that they heard in testimony of three small changes made. Amendment Attached (1).

Senator Sorvaag: Moved a do pass on the amendment, Hacker-Sinner Amendment.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Laffen: Moved a do pass on engrossed HB 1316 as amended.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sinner

13.0635.02002
Title.03000

Adopted by the Industry, Business and Labor
Committee

March 20, 2013



Handwritten signature and date: 3/20/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1316

Page 2, line 18, after "state" insert ", Minnesota, Montana, or South Dakota"

Page 2, line 23, after "~~transaction~~" insert "in this state, Minnesota, Montana, or South Dakota"

Page 3, line 14, after "disclose" insert "to the seller"

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed 1316**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number Hacker and Sinner

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

Motion Made By Senator Sorvaag Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed 1316**

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 Laffen Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

HB 1316, 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 1316 was placed on the Sixth order on the calendar.

Page 2, line 18, after "state" insert ", Minnesota, Montana, or South Dakota"

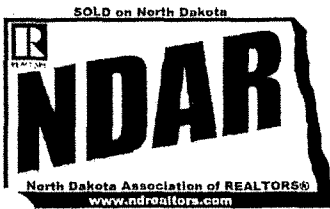
Page 2, line 23, after "~~transaction~~" insert "in this state, Minnesota, Montana, or South Dakota"

Page 3, line 14, after "disclose" insert "to the seller"

Renumber accordingly

2013 TESTIMONY

HB 1316



North Dakota Association of REALTORS®

318 West Apollo Avenue – Bismarck, ND 58503-1404
Phone: 701-355-1010 or 800-279-2361 – Fax: 866-665-1011
www.ndrealtors.com info@ndrealtors.com

①
1-23-2013
HB 1316

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Wahpeton-Breckenridge:
Steve Diederick, GRI, CRS

Williston:
Kassie Groder

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Suzanne Wetz, *Executive Assistant*
Suzanne@ndrealtors.com

Claus Lembke, *Gov't Affairs Director*
Claus@ndrealtors.com

Testimony for House Bill 1316
House Industry, Business and Labor Committee
January 23, 2013

Mr. Chairman and Members of the House IBL Committee:

My Name is Claus Lembke. I represent the ND Association of REALTORS® as their Political Affairs Director. (claus@ndrealtors.com Cell 220-8628)

Our Association represents 8 Local Board of REALTORS® with a total membership of 1500 REALTORS®.

I would like to start the testimony on HB 1316 by explaining each proposed change in the bill.

Following that, with your permission, I would like to introduce two REALTORS® who will explain how difficult the current law is for REALTORS®, Lenders but mostly their customers and clients.

Page 2 lines 4 through 10: Checks drawn on a brokers or attorneys trust account are and should be good funds. Last session we were told by the spokesperson for the closing agents that they would accept any brokers trust account check if the Broker is known to be reputable.

Should there ever be a broker whose trust account does not have sufficient funds one can get relief from the Real Estate Commissions Research and Recovery Fund.

Page 2 Line 11: Cashier's checks should not be limited. If a closing company wants to limit these type of checks they can do so by policy.

Page 2 Line 14 through 18: Makes the law simple and does not leave it up to a closing agent's ambiguous opinion. It actually helps the closing agent. The closing agent can also do this by policy.

Page 3 lines 3 and 4: The overstrike simplifies what a closing agent can do and removes unnecessary and confusing language. Again, if a closing agent wants limitations here, they can do that by their own policy.

Page 3 Lines 4 to 6: This language was added at the request of Attorney Jack McDonald on behalf of the ND Independent Community Banks.

With that Mr. Chairman and Committee members I am ready for any questions and or introduction of the 2 REALTORS® who would like to testify here today.



Cashier's check

From Wikipedia, the free encyclopedia

② 1-23-2013
HB 13/C

A **cashier's check** (**cashier's cheque**, **banker's cheque**, **bank cheque**, **official cheque**, **demand draft**, **teller's cheque**, **bank draft** or **treasurer's cheque**) is a check guaranteed by a bank, drawn on the bank's own funds and signed by a cashier.^[1] Cashier's checks are treated as guaranteed funds because the bank, rather than the purchaser, is responsible for paying the amount. They are commonly required for real estate and brokerage transactions.

When a customer asks a bank for a cashier's check, the bank debits the amount from the customer's account immediately, and then the bank assumes the responsibility for covering the cashier's check. This is in contrast with a personal check, where the bank does not debit the amount from the customer's account until the check is deposited or cashed by the recipient.

Cashier's checks deposited into a bank account are usually cleared the next day. It is the customer's right to request "next-day availability" when depositing a cashier's check in person. Most banks do not clear them instantly. However, banks are permitted to take back money from a "cleared" check one or two weeks later if subsequent processing finds it to be fraudulent. Because customers believe the checks have been found valid and have been converted to cash in hand, customers are readily defrauded by schemes that ask them to part with goods or a portion of the money if it is cleared in a timely manner.

Legal definition

In the United States, under Article 3 of the Uniform Commercial Code, a cashier's check is effective as a note of the bank. Also, according to Regulation CC (Reg CC) of the Federal Reserve, cashier's checks are recognized as "guaranteed funds" and amounts under \$5,000 are not subject to deposit hold, except in the case of new accounts. The length of a hold varies (2 days to 2 weeks) depending on the bank. It is not clear what length of time may pass before a bank can be held responsible for accepting a bad cashier's check.



Continental Real Estate, Inc.

(3)

HB 1316

1-23-2013

MLS.



Residential/Investment • Farm-Ranch
Commercial • Property Management

Testimony for House Bill 1316
House Industry, Business and Labor Committee
January 23, 2013

Mr. Chairman, Members of the House IBL committee:

My Name is Diana Zietz, Immediate Past President of the ND Association of REALTORS® and a Co-Owner/REALTOR® with Continental Real Estate in Dickinson.

We have two title companies in Dickinson who enforce the current Good Funds law differently. One still accepts our trust account checks. The other title company, depending on the amount of earnest money, there are different ways to deliver the earnest money to the title company. That's where the problem lies. You have to know what title company and how much earnest money.

Here is the procedure for the one Title Company:

Under \$3,000 our trust account check is accepted.

Over \$3,000 they will accept our trust account checks, but they need the check 3 days prior. (We seldom know for certain when the closings are going to be. Often we have very little time to get ready.)

If you bank at the same institution as the title company, funds can be transferred directly into their trust account without charge. We have to make copies of receipts for the title company and for our records.

There should be no reason that the title company doesn't accept the Real Estate trust account check as good funds.

I have experienced closings where the Title Company can't find the money that was wired in to their account.

If money can't be transferred, we would have to get a cashier's check (a cost of \$3 or \$4) or wire (a cost of \$20 to \$40) the funds to the title company. That is an additional expense for the client.

It isn't so bad, when I know in advance when the closing is happening, but when it's a short notice closing (most closings are last minute) you have to make a last minute dash to the bank. This can be difficult, especially if there is only one staff person in the office.

As a REALTOR[®], a big issue is that it can be difficult to get the closing statements from the title company in time to know how much your buyer needs to bring to closing. You often have to estimate what will be due at closing. If the buyer doesn't bring good funds to closing the seller has to wait for their net proceeds. The sellers, by now, have vacated their home and the buyers are ready to move in. But most sellers won't allow that until they receive their net proceeds from the sale.

Once I called the title company and asked: "Can my buyer bring cash to closing?" The title company responded, "No we don't accept cash". Then I asked "Would certified funds or a check drawn up by a local bank be acceptable to you?" The response was "Yes if they are under \$10,000 but they would not be considered good funds for 3 days".

Buyers are not told in advance from the title company how much money is needed at closing so the buyers can't get a cashier's check. Then at closing, the buyers leave the closing to get a cashier's check for the title company to close on the property (personal checks are not accepted either). Then funds are still not dispersed because the title company has to wait 3 days for the cashier's check to clear.

Needless to say we have many very unhappy buyers and sellers!

With that Chairman Keiser and committee members, I am ready for any questions you might have.



④
1-23-2013
HB 1316

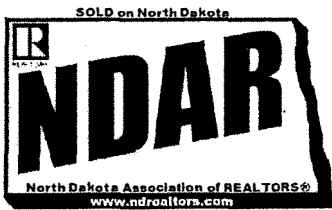
Testimony for House Bill 1316
House Industry, Business and Labor Committee
January 23, 2013

Mr. Chairman, Members of the House IBL committee:

Please accept this as my support for the proposed changes.

I believe these changes keep the law in place while helping the lender, Realtor, and closing agent simplify the process at the local level in a challenging closing environment. It gives the freedom for closing agents to set policy to manage risk and verify funds if there are concerns about the source of the funds. It allows everyone to structure best practices around trusted business partnerships and common sense.

Sincerely
Joe Sheehan
Vice President Mortgage
joe.sheehan@cornerstonebanks.net
701-751-4631



North Dakota Association of REALTORS®

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Wahpeton-Breckenridge:
Steve Diederick, GRI, CRS

Williston:
Kassie Groder

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Claus Lembke, *Gov't Affairs Director*
Claus@ndrealtors.com

Testimony for House Bill 1316
House Industry, Business and Labor Committee
January 23, 2013

Mr. Chairman and Members of the House IBL Committee:

The changes to the good funds law in ND Century Code 47-34-01 & 47-34-02 are not intended to eliminate or devalue the current law. Rather we are suggesting that these changes will make it possible for title companies throughout the state to be in compliance with the law as intended.

We could give you anecdotal testimony as to how this law has cost home buyers time and money, but that isn't our purpose. In fact, those stories are only going to be found in certain areas of the state. The reason for that is because this law is not being uniformly applied.

In some areas of the state, the law is being basically ignored and it's business as usual just as it was prior to the passage of this law in the 62nd session. They are accepting cashier's checks just as they always have. In other areas of the state, the law is being more strictly followed, but not completely. Everywhere in the state allowances are being made to work around the law.

In my area, some title companies have opened accounts in some but not all financial institutions that write home mortgages. So, when it comes time to close the loan, if one of those institutions is the writer of the loan, they effect an electronic transfer from one account to another, so they don't need to wire or wait to prove good funds. I know that this example is splitting hairs, but according to the law, electronic transfers are not defined as good funds at this time. If the home buyer's bank is not one of the chosen institutions, the home buyer isn't able to take advantage of this exception.

We believe that when the 62nd legislature passed the good funds bill into law their intent was that the law be followed.

We think that the changes we are proposing will allow the state's title companies to adhere to the law without changing how they are currently operating and we won't be coming to this body with exceptions every session. As you have heard, if an individual title company wishes to restrict what they will accept, they can do it through their own policies and procedures.

Thank you for your attention, and I will try to answer any questions you may have.

5 1-23-2013
1316



⑥ 1-23-2013
HB 1316

ICBND recommends the change to Section 47-34-02 of the North Dakota Century on lines 4, 5 and 6 of House Bill No. 1316.

Two years ago the "Good Funds Law" was passed and required that closing agents (Title Companies) have Good Funds before disbursement of funds in real estate transactions. This has required banks to wire funds prior to a closing or issue a check 3 days prior to a closing to give time for the check to clear so the closing agent would have collected funds. This has caused Banks to adjust procedures to get funds to closing agents prior to closings and prior to getting signed documents from loan customers.

Some closing agents developed a practice of requesting pay-off information for a date 2 days to a week after the scheduled closing date. This was done to give the closing agents extra time to finish work related to the closing. We understand that the increase in activity in Western North Dakota has put a strain on the staff of closing agents. The request for pay-off did not include the closing date and the assumption was that the date requested for the pay-off was the closing date.

The closing statement for a seller or for the owner refinancing a property did not disclose that the pay-off amount was for a date after the closing. The assumption would be that the pay-off was calculated for the day of the closing.

Two members of the ICBND Board and Jack McDonald met with representatives of the two Bismarck title companies. ICBND wanted the title companies to request pay-off information for the date of closings and a daily accrual for interest. If the title companies needed additional days to complete a transaction, they could add the days of interest but would need to disclose to the seller or owner refinancing a property that the pay-off was calculated for a date after the closing. The current practice may have a pay-off calculation for a week after the closing that was not disclosed. The title company may issue a pay-off check to a bank 4 days after the closing for the amount calculated for 1 week after the closing. The bank now had to deal with a 3 day over payment of interest that needed to be refunded to a seller or person refinancing a property. The customer would ask, "What is this for?" If the customer knew what his pay-off should be, he would wonder what the bank was doing with the extra money.

Two months after the meeting, the ICBND Legislative committee met. It appeared that nothing had changed with the title companies and one of the members disclosed that he had refinanced his home and a check was delivered 2 days after the closing. He paid 2 days of additional interest and the bank had to wait additional days for the check to clear. The Committee then approved action to change the law by adding the disclosure requirement. Attached is the proposed Change.

David Ludwig
ICBND Board Member
Security first Bank of North Dakota
Bismarck, ND

Phone: 701-222-4444

1 **47-34-02. Real estate transaction disbursements.**

2 A closing agent may not make disbursements from an escrow account in connection with a
3 real estate transaction unless funds that are received ~~from any single party to the real estate~~
4 ~~transaction which in the aggregate are at least ten thousand dollars~~ are good funds. In a
5 prominent manner in the closing documents, a closing agent shall disclose the anticipated
6 closing date and all of the dates through which any loan payoffs are calculated.

ND House Industry Business and Labor
Committee Hearing on HB 1316
Testimony from the ND Land Title Association
1/23/13

⑦ 1-23-2013
HB 1316

Good afternoon Mr. Chairman and Members of the Committee,

The title insurance, closing services industries help drive our nation's economy through the safe and efficient transfer of real property. In the current housing market these services are increasingly important for the confidence of lenders to provide loans to credit worthy homebuyers. Because we provide proof that people own their homes, they can use real estate capital to grow their assets and stimulate the economy. Americans close their loans faster than any other country – in as little as 30-45 days on average. And the speed of that transaction saves consumers tens of billions of dollars annually in additional interest costs.

Our work also provides benefits to society that go largely unrecognized. At no cost to taxpayers, our industry collects \$1.75 billion per year in back income taxes, \$3 billion per year in delinquent real estate taxes, \$325 million per year in delinquent child support payments, and we pay \$170 million per year to purchase copies of recorded documents supporting local governments. These benefits are provided by an industry in which 65% of the companies have 1-3 employees and gross less than \$250,000 per year. We are main street small business making a big difference.

What we do can be a little confusing. There are two distinctly different sides to our business, title insurance which protects the legal title to the property on behalf of the insured and closing or settlement services. The settlement or closing side of our business, which is the handling of funds to consummate the closing of a real estate transaction, is what we are here today to discuss. In some states these functions are not even handled by the same company. Due to mono-line statutes we cannot provide insurance outside of title such as to the real estate closing side of our business. This activity would put us outside of the mono-line statutes and be considered credit risk. In short we cannot offer insurance protection on the funds related to the transaction.

To protect the consumer funds in a real estate transaction must held in "trust". We take this requirement very seriously to ensure funds are available for individual transactions. However, despite all efforts fraud still exists. These trust accounts are regulated by the FDIC, RESPA and other federal agencies which provide guidance and regulation to ensure the funds are never comingled. Further, the National Association of Insurance Commissioners and the American

Land Title Association are in the process of finishing a working paper of the protection of escrow funds which includes sound public policy such as Good Funds Statutes.

Good Fund statutes ensure the money brought to the closing table are valid. This is a much lesser standard than “collected” funds which you may recognize if you deposit a large check, cashier’s check. Banks will not make those funds irrevocably available until they are collected upon through the Federal Reserve. Good Funds provide a guideline for acceptable risk so that funds will be available to assist in commerce and real estate closings.

One of the most serious financial crimes in America is check fraud and it’s on the rise. According to the Office of the Comptroller of the Currency, more than 1.2 million fraudulent checks are written every day—more than 13 per second. Losses this year will exceed \$20 billion. These check fraud gangs are hardworking and creative. Today they are able to obtain MICR ink, seven color checks with security ribbons and holograms making it nearly impossible to tell the difference between a fraudulent check and one that is real.

If you’ve had the opportunity to watch “Catch Me if You Can” you will see how easy the infamous master of check fraud turned FBI consultant Frank Abagnale took the banking system for millions. Frank, an expert in check fraud, states that because punishment for fraud and recovery of stolen funds are so rare, prevention is the only viable course of action. Company standards alone cannot protect funds, good public policy is necessary.

Historically, the banks have been liable for these losses. However, as a result of changes in the Uniform Commercial Code the depositor now shares in the loss under the Holder in Due Course clause. Under HICDC, a company can be held liable for counterfeit items that look “genuine,” or are virtually identical to its checks.

When a fraudulent check is presented to a title company and used in a real estate transaction neither the title insurance policy or as you will hear a story the company’s E&O policy will protect the consumer for these missing funds. Normally settlement agents will have several parties’ earnest money, or loan funds on account at any given time and one bad check on an escrow account takes that money from the innocent third parties. When these losses become serious enough the settlement agent may not have the resources to reimburse their escrow account. Consider the story you will hear in which a company lost more than \$200,000 on a bad check here in North Dakota. Further, most agents in ND fall into the small business category and gross less than \$250,000 per year. When the agent does not have the resources to put the funds back into the escrow account the result is an agent defalcation. This automatically shuts

the business down and the innocent parties left holding the “empty” bag. The consumer who’s down payment on their home is nowhere to be found and they are the party harmed. Further, with lack of access to title companies in many parts of the state service to these areas would become even less available without the abstractor or title company.

We are a small state with big things happening and although we all appreciate the good old days of how business was conducted in markets such as the one I work in, very few dollars are from inside the state and our real estate closings are rarely with our neighbors anymore. The majority of development is now by out of state developers I have never met. But fraud doesn’t just come from out of state. See Attachment – State Bank of Munich FDIC Alert.

We need public policy to ensure the funds of innocent consumers are not at risk of third party fraudulent checks. Public policy should also support a level playing field to protect consumers from companies who may irresponsibly take cashier’s checks to rush a closing to garner market share. Taking these certified checks for rushed closings “at best” saves one day only serve to increase the chance of fraud.

HB 1316 essentially guts the ND Good Funds law and requires a title company to take a cashiers check, treat it as good funds and then disperse potentially by wired funds from our escrow account that may not be sufficient.

Example: A 500,000 Cashier’s Check is presented at the closing and the seller requires the proceeds to be wired out although we still have not deposited or cleared those funds and the trust account may have less than \$500,000 to disperse.

Check kiting is illegal and no bank considers a check in hand as good funds. However, this bill in fact encourages title agents to close transactions with funds they have not presented to the bank for initial deposit. Further the Consumer Finance Protection Bureau, our regulator, has released a new three day requirement for consumers to view their settlement statement. This requirement will be in effect in one year and provides plenty of time for the consumer to deliver cashier’s check to the title company in advance of the closing and avoid delays.

We would ask the committee to protect consumers, title companies and abstractors conducting closing by recommending a Do Not Pass on HB 1316 – Thanks you.

North Dakota Land Title Association Legislative Committee Chair Nick Hacker (701) 770-3054

8 1-23-2013
MB 13/10

WELLS FARGO BANK, N.A.
WELLS FARGO HOME SECURITY
11601 NORTH BLACK CANYON HIGHWAY
PHOENIX, AZ 85022

CASHIER'S CHECK

No. 0150482880
Date 08/02/06

WELLS FARGO BANK

Loan # 20053097100155
For 480387919
JOSE TRINIDAD AND DOREEN ELARA

Pay **\$12,000.42** **dols 42 cts**
Exactly
Twelve Thousand dollars and 42 cents


\$12,000.42

VOID IF OVER \$12,000.42

Richard J. [Signature]
AUTHORIZED SIGNATURE

PAID BY THE ORDER OF

⑈0150482880⑈ ⑆1200042⑆ 480387919⑆

CHASE 

CASHIER'S CHECK

406968876
Date 12/15/2005

Remitter JONATHAN CHERRY

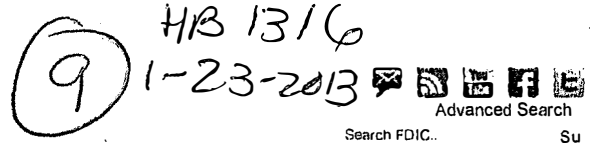
Pay SIX THOUSAND SIX HUNDRED DOLLARS AND 00 CENTS

\$ *****6,600.00**

Pay To The Order Of

Drawn JPMORGAN CHASE BANK, N.A.
Stephen P. [Signature]
First Vice President
Issued by Integrated Payment Systems, Inc., Englewood, Colorado
JPMorgan Chase Bank, N.A., Denver, Colorado

⑈131100⑈ ⑆102000979⑆ 25004069688767⑆



Each depositor insured to at least \$250,000 per insured bank

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Special Alerts

SA-51-2010
May 13, 2010

TO: CHIEF EXECUTIVE OFFICER (also of interest to Security Officer)
SUBJECT: Counterfeit Cashier's Checks
Summary: *Counterfeit cashier's checks bearing the name The First State Bank of Munich, Munich, North Dakota, are reportedly in circulation.*

The First State Bank of Munich, Munich, North Dakota, has contacted the Federal Deposit Insurance Corporation (FDIC) to report that counterfeit cashier's checks bearing the institution's name are in circulation.

The counterfeit items display the routing number **091302762**, which is assigned to The First State Bank of Munich. The items also display the following security feature statement embedded within the darkened top border: "THIS DOCUMENT CONTAINS SECURITY FEATURES." The words "CASHIERS CHECK" (without an apostrophe) are displayed in the lower-left corner.

Authentic cashier's checks display the following security feature statement embedded within the darkened top border with rounded corners: "ORIGINAL CHECK IS PRINTED ON CHEMICAL REACTICE PAPER AND HAS MICRO PRINTING IN THE SIGNATURE LINE." The words "CASHIER'S CHECK"(with an apostrophe) are displayed in the lower-left corner. The numerical dollar amount of the check is enclosed in a box on the right side of the checks.

Copies of a counterfeit item and an authentic check (VOID) are attached for your review. Be aware that the appearance of counterfeit items can be modified and that additional variations may be presented.

Any information you have concerning this matter should be brought to the attention of:

Maria Hoffman
Vice President of Operations
First State Bank of Munich
416 Main Street
P.O. Box 9
Munich, North Dakota 58352
Telephone: (701) 682-5331
Toll-Free: (800) 859-2035
Fax: (701) 682-5334
E-mail: Mariah@fsbmunich.com

Information about counterfeit items, cyber-fraud incidents and other fraudulent activity may be forwarded to the FDIC's Cyber-Fraud and Financial Crimes Section, 550 17th Street, N.W., Room F-3054, Washington, D.C. 20429, or transmitted electronically to alert@fdic.gov. Questions related to federal deposit insurance or consumer issues should be submitted to the FDIC using an online form that can be accessed at <http://www2.fdic.gov/starsmail/index.asp>.

For your reference, FDIC Special Alerts may be accessed from the FDIC's website at www.fdic.gov/news/news/SpecialAlert/2010/index.html. To learn how to automatically receive FDIC Special Alerts through e-mail, please visit www.fdic.gov/about/subscriptions/index.html.

Sandra L. Thompson

CASHIER'S CHECK

Citibank

Citibank, N.A.

475898597

01-0022
1010

DATE 10/20/2011

AMOUNT \$***228,000.00

PAY ****TWO HUNDRED TWENTY-EIGHT THOUSAND US DOLLARS AND 00 CENTS****

TO
THE
ORDER MINOT GUARANTY & ESCROW
OF

NAME OF REMITTER: COLIN WALSHAW

Payable through Citibank USA, N.A.

DRAWER: Citibank, N.A.

BY  MP
AUTHORIZED SIGNATURE

Security Features included. Details on back.

10 HB
1316

1-23-2013

⑈475898597⑈ ⑆00082⑈260⑆ 2014258031⑈

Handwritten scribbles and marks on the left side of the page.

Large handwritten 'X' mark on the right side of the page.

CASHIER'S CHECK

475898597 01-0922
1010

Citibank
Citibank N.A.

CONTRACT# BUY RATE
551609 .969260

DATE 10/20/2011

RETURNED UNPAID

NSF USD LISTED CAD

AMOUNT \$***228,000.00

ITEM DISHONoured

PAY TO THE ORDER OF EIGHT THOUSAND DOLLARS AND 00 CENTS

OTHER

POINT OF ENTRY

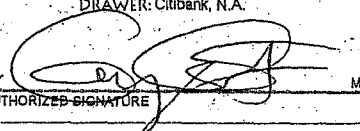
DRAWER: Citibank, N.A.

MINOT GUARANTY & ESCROW
WELLS FARGO BANK

TO TRADE SERVICES: VAN

11/10/2011

NAME OF REMITTER: COLIN WALSHAW

BY  MP
AUTHORIZED SIGNATURE

Security Features Included: EP, Double on Back

11 HB1316
1-23-2013

⑈475898597⑈ ⑆00082⑈260⑆ ⑆014258031⑆ ⑆0022800000⑆

Original copy provided
to Sterling Mueller
11/28/11 *[Signature]*

Security Features:

- Microprint Border
- Security Screen
- Chemical Reactive Paper
- Fluorescent Fibers

The security features listed below are not listed, except as they apply to the product.

Fluorescent Fibers: Randomly distributed fibers that glow under ultraviolet light.

Chemical Reactive Paper: Paper that reacts to heat, moisture, or other chemicals, changing color.

Security Screen: A screen that is visible from both sides of the check.

Microprint Border: A border of tiny, repeating characters.

NOV 09 2011

INITIALS *[Signature]*

DATE 11-25-11

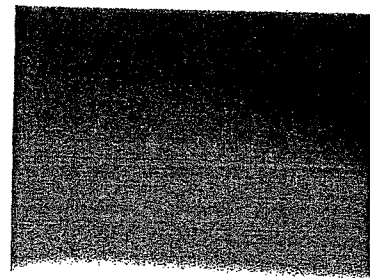
EMERSON

PORTLAND OREGON

2015738716
TOWN & COUNTRY CREDIT UN
MINOT ND 58701

CUT 27 2011

FOR DEPOSIT ONLY
TOWN & COUNTRY CREDIT UN
MINOT GUARANTY & ESCROW C
ESCROW/ACCOUNT
ACCT # 00224257935



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Since 1974*



12

1-23-2013
HB 1316

January 22, 2013

Representative George J. Keiser, Chairman
Industry, Business & Labor Committee
North Dakota House of Representatives
District Office
422 Toronto Drive
Bismarck, ND 58503-0276

The Honorable Representative George Keiser:

My name is Bill Burding and I am the Executive Vice President and General Counsel for the Orange Coast Title Family of Companies (OCT) which is a holding company of numerous title insurance agencies in 46 states and is quite likely the largest title agency in the Country. In addition, I sit on the Board of Governors for the American Land Title Association (ALTA) which is the trade organization which promulgates the policies that title companies write nationally. I am writing to you to state my concern regarding the legislation that would abolish your Good Funds law. This topic is very close to me as I have helped draft Good Funds laws in several Western states and amendments thereto.

It is great concern for me when any state decides to regress and abolish a law that is there to protect consumers and title companies alike. Good Funds laws are in place to first and foremost protect the consumer from fraud. At our company we take our duty as a "trust" company very seriously and do everything to protect our customer's money. However, despite all efforts, fraud exists. For example in our two Nevada operations, over a five year period, we suffered millions of dollars of losses from fraudulent Cashiers Checks that resulted in significant litigation. These losses came from our trust account and we had to replenish that money from our operating account which cost many jobs. Since the establishment of the Nevada Good Funds Law, we have not had one loss resulting from check fraud. Our company is fortunate to be able to afford those losses and stay in business. Suffice it to say, most companies could not suffer this event and stay in business. In addition, please realize from where the money is stolen, the escrow trust account. Thus where there is fraud, they are not stealing from the title company; they are stealing from other consumers. Should the title company not have sufficient funds to pay for the fraud, then other consumers lose money AND the company and the corresponding jobs are eliminated. This is a double loss.

If I may, I would like to give you two examples of check fraud that have happened to our company. Sadly, this is only a small sample of the problems that have been suffered by our company.

Our Las Vegas entity closed on a \$2.8 million home paid for in "cash" accepting a Cashier's Check drawn on one of the "Big Five" banks. It looked absolutely real and our company closed the transaction, recorded the operative documents and disbursed the cash out of the trust account. Over three weeks later, we were informed that the check was fraudulent and those funds were deducted from our trust account putting our company \$2.8 million out of balance. Sadly, the "buyers" flipped the house to a Bona Fide third party purchaser for fair market value. Thus the sellers had their money and the new buyers were in their home but the chain of title was compromised. They both got brought into litigation despite the fact both parties were innocent. To make matters worse, during the intervening sale the fraudsters walked away with \$3.25 million of legitimate cash and the money was used by the 'Freemen' to fund potential domestic terrorism and buy a cache of weapons according to the FBI agents investigating the crime. After three years of extensive litigation, all parties came out the losers and the stolen money was not recovered.

Second, we had a string of fake Cashiers Checks and we had to cease the ability to take such checks. Then we had a number of fake checks drawn on OCT accounts that were blocked by our accounting department. After extensive investigation, the FBI discovered a "printing press" where the counterfeiters were printing these bogus checks. The level of sophistication was astounding. They were printing seven color checks, had security ribbons and even realistic looking holograms.

After all this we eliminated the policy of taking such checks unless they had been cleared by the issuing bank and confirmed valid. We insist upon wires and the volume of fraud is reduced arithmetically. I understand there is a wire fee charged by the bank, but is the amount of that fee greater than the security it provides? In most instances, the proceeds of homes constitute the lion's shares of a person's net worth. I believe we need to take all reasonable precautions to protect that money and Good Funds laws are important part of that protection. We catch several fake checks every year. Since all companies play by the same rules and follow the Good Funds law, a level playing field is created. Abolition of those laws would create an unfair playing field in the title insurance industry. The only way we can be competitive is to utilize the Good Funds laws that exist in most states. Without them, companies that want to garner market share might irresponsibly take a check to get market share and those companies who are responsible will suffer for observing proper policies by losing transactions.



In the end, the decision is whether to distribute money immediately and speed up the closing process by a day at best and increase the chance for fraud or dramatically reduce fraud. In this era of Dodd-Frank and the Consumer Finance Protection Bureau, there is a national policy to safeguard the consumers wherever possible. Repealing your well drafted and well conceived law in favor of speed is ill conceived and serves as an open invitation to fraudsters to come to the Great State of North Dakota. I hope you decide to err on the side of the consumer protection.

Thank you for your consideration in this matter. If there is anything I can do to assist you further I would be very pleased to help in any way possible.

Sincerely,



William D. Burding, Jr.
Executive V.P. and
General Counsel



(i) Subcommittee
HB 1316
1-30-2013 pm

House Bill 1316

SECTION 1.

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47-34-01. Definitions.

As used in this chapter:

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1. "Closing agent" means a person or company that closes a real estate transaction in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender.
2. "Escrow account" means:
 - a. A checking account established by a closing agent with a bank, savings and loan association, credit union, or savings bank that is chartered under the laws of a state or the United States and which is used exclusively for the deposit and disbursement of funds for a real estate transaction; or
 - b. A trust account maintained by an attorney under the North Dakota Rules of Professional Conduct.
3. "Collected Funds" means:
 - a. Cash deposits or checks that have been presented for payment and payment has been irrevocably credited to the closing agents escrow account.
- 3.4. "Good funds" means funds in any one or more of the following forms:
 - a. United States currency.
 - b. Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.

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b. Funds electronically transferred to the escrow agent's trust account by the bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States which is the host institution of the escrow agent's trust account.

c.

e. A check that has been presented for payment and for which payment has been received collected. As used in this subdivision, the term check includes a certified check and a cashier's check.

d.

4. A check not to exceed ~~three thousand dollars~~ which is drawn on the trust account of a real estate broker licensed under chapter 43-23 or on the trust account maintained by an attorney under the North Dakota Rules of Professional Conduct, for which funds are collected funds by the real estate broker or attorney's trust account, ~~if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the trust account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.~~

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e.

5. A cashier's check not to exceed ~~ten~~ fifty thousand dollars in the aggregate that is ~~drawn~~ received by the escrow agent 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 located in the state of North Dakota and payable through the 9th Federal Reserve District.

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f.

g. A check drawn on the escrow account of another closing agent, if the closing agent in the real estate transaction has collected funds.

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~~a. 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.~~

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6.5. "Real estate transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition in connection with the purchase, sale, or financing of an interest in real estate; or a settlement or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a loan financing if the only parties to the loan transaction are the lender and the borrower, and the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

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SECTION 2.

47-34-02. Real estate transaction disbursements.

A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds that are received from any single party to the real estate transaction ~~which in the aggregate are at least ten thousand dollars~~ are good

funds. A violation of this statute by a Closing Agent shall be punishable by a fine of \$5,000 per occurrence.

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(2)

Claus NDAR

From: Mark Vanyo <mvanyo@fmrealestate.com>
Sent: Tuesday, January 29, 2013 5:30 PM
To: gsukut@nd.gov
Cc: claus@ndrealtors.com
Subject: 1316 Good Funds

Subcommittee
HB 1316
1-30-2013 pm

Representative Sukut: I am the Owner and President of U.S. Title and Closing Services in Fargo ND. I am responding to the Good Funds Bill(1316). Although we can live with many of the provisions of the Bill, the fine of \$5,000.00 just frankly seems exuberant. In the Closing business, many circumstance's can change just prior to closing and if someone brought a Cashiers Check for \$50,001.00, we would have to send them away to wire the money which could delay the closing, or take the risk of a \$5,000.00 fine over one dollar. The public is not properly treated in this situation. I realize this example is extreme, but you get the point.

Also, I did not see anywhere that it was explained who would "Police" this or where the money for fines ended up.

A fine(definitely less than \$5,000.00) should only be enforced if the public is damaged or a Closing Company is continuously putting the public at risk for not having good funds. I sincerely hope this gets changed.

Respectfully,

Mark D Vanyo

President
Coldwell Banker First Realty
701-293-3423

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2238 / Virus Database: 2639/5568 - Release Date: 01/30/13

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2238 / Virus Database: 2639/5568 - Release Date: 01/30/13

Claus NDAR

From: sharon@srslawoffice.com
Sent: Wednesday, January 30, 2013 2:22 PM
To: Claus NDAR
Subject: Re: 1316 Good Funds hearing

Claus:

As a provider of title insurance and closings, I would object to the fine to be imposed under this bill. When we do closings, most of them are insured closings and if we do not have the funds available for closing, we would have to cover any shortage of funds. We have insurance to cover such contingencies.

Also, I would be in favor of allowing banks to directly deposit the funds into our trust account if we maintain a trust account at such bank. This would be more acceptable to our local lenders rather than having to wire us the funds.

Thank you.

Sharon M. Reis
Reis Law Firm, PC.
2850 24th Ave. S., Ste. 302
PO Box 5116
Grand Forks, ND 58206-5116
(701) 772-8156; fax (701) 772-9564

Please note our new company name*

IMPORTANT: Information in this email, including attachments, is confidential and legally privileged. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or not taken in reliance on it, is prohibited and may be unlawful. If you have received this communication in error, please notify the sender.

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Version: 2012.0.2238 / Virus Database: 2639/5568 - Release Date: 01/30/13

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2238 / Virus Database: 2639/5568 - Release Date: 01/30/13

Claus NDAR

From: Peggy <Peggy@fmtitlecompany.com>
Sent: Wednesday, January 30, 2013 2:05 PM
To: Claus NDAR; sandradittus@northdakotalaw.net; val@qualitytitlend.com; sharon@srslawoffice.com
Subject: RE: 1316 Good Funds hearing

We object to many parts of this bill. Especially the fine. The penalty is only imposed on the title companies which is ridiculously unfair. In the 25 years I have been working for title companies in the FM area, there has never been an issue with "good funds". I have no idea how this bill could be policed or enforced. It appears to be a waste of time and money

Peggy Barnum

Manager

FMTITLE

101 8th St S FARGO, ND 58103

P) 701-893-1000 | F) 701-893-1003

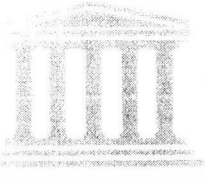
peggy@FMTitleCompany.com

www.fmtitlecompany.com



From: Claus NDAR [mailto:claus@ndrealtors.com]
Sent: Wednesday, January 30, 2013 2:00 PM
To: Peggy; sandradittus@northdakotalaw.net; val@qualitytitlend.com; sharon@srslawoffice.com
Subject: 1316 Good Funds hearing

Today at 4:15 a subcommittee will take action on this proposal. From what I hear the only objection is the \$5,000 fine.



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L. Wayne Young, Paralegal – Real Estate

January 28, 2013

IN RE: House Bill No. 1316 “Good Funds”

Dear Representative

We are writing to express our desire, as a law firm who deal with real estate transactions on a daily basis, to amend NDCC Section 47-34.01 and 47.34.02.

The current law provides that “Good Funds” are limited to \$3,000.00 from a real estate brokers account and/or an attorney’s trust account or a limit of \$10,000.00 in the form of a cashier’s check can be brought to the closing table. All other funds have to be placed in the closing agents Escrow Account prior to the closing. These limitations are unrealistic when conducting a real estate transaction as in many cases funds can only be released upon the execution of closing documents by the parties involved in the transaction. We, as closer, are very diligent in monitoring our escrow accounts to verify that funds are secured before any checks are issued to pay commissions, mortgage payoff, appraisers, recording fees, taxes etc. To put limitations on the amount of monies coming to the closing table make it very difficult, if not impossible, to fully close a transaction at the closing table.

Further, the current law serves no relevant purpose as our escrow accounts are monitored so that we don’t disburse money that is not there causing us to overdraw and jeopardize our obligation under the North Dakota Rules of Professional Conduct.

Member of the American Academy of Estate Planning Attorneys

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(1) 2-4-2013
HB 1310

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1316

Page 1, line 1, after "to" insert "create a new section to chapter 47-34 of the North Dakota Century Code, relating to good funds for real estate transactions; and to"

Page 1, line 12, after "2." insert: "Collected funds" means a cash deposit or a check that has been presented for payment and for which payment has been irrevocably credited to the closing agent's escrow account."

3. "

Page 1, line 19, overstrike "3." and insert immediately thereafter "4."

Page 2, line 2, overstrike "received" and insert immediately thereafter "collected"

Page 2, line 7, remove the overstrike over the overstruck comma

Page 2, line 10, after "~~escrow~~" insert "for which funds are collected funds by the real estate broker or the attorney's trust"

Page 2, line 10, remove the overstrike over "~~account~~"

Page 2, line 11, after "is" insert "received by the closing agent and which is"

Page 2, line 13, after "States" insert "located in this state and payable through the ninth federal reserve district"

Page 2, after line 18, insert:

"g. Funds transferred to the closing agent's escrow account by the bank, savings and loan association, credit union, or savings bank that is the host institution of the closing agent's escrow account."

Page 2, line 19, overstrike "4." and insert immediately thereafter "5."

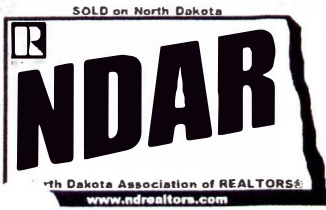
Page 3, after line 6, insert:

SECTION 3. A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

Civil damages.

In addition to any other cause of action that may exist, a person may bring a cause of action against a person that violates section 47-34-02. In addition to actual damages a plaintiff may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred dollars per violation in the first action and is liable to a plaintiff for one thousand dollars per violation in any subsequent action brought by any person."

Renumber accordingly



North Dakota Association of REALTORS®

(1)

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Testimony for Engrossed House Bill 1316 3-20-13

Mr. Chairman and members of the Senate IBL committee:

My Name is Greg Larson. I am a Realtor Associate with Century 21 Morrison and represent the North Dakota Association of Realtors as their Vice President and Political affairs Chairman.

Our state wide trade association is represent by 8 local Boards of Realtors with a total membership of over 1500 Realtors.

Our association asked for the introduction of HB 1316 as many of our clients experienced much difficulty with the existing "Good Funds" laws that affects how funds are handled at the closings of Real estate transactions.

The original HB 1316 found many disagreements between us and the closing companies which are mostly Title Companies. We held many discussions among ourselves and with a subcommittee of the House IBL committee chaired so ably by Representative Gary Sukut. Some very good negotiations and compromises brought us into an agreement that is now represented by the engrossed version of HB 1316 before you here today.

We are in full support of this version of the bill and want to compliment Nick Hacker and the many other Closing agents that worked so diligent on this legislation.

There are many technical aspects of HB 1316 that by agreement are best presented and explained by Nick Hacker of the North Dakota Guarantee & Title Company.

Mr. Chairman and Members of the Senate IBL committee, we hope that you will support this legislative proposal.

I stand for any question you may have.



ND Senate Industry Business and Labor
Committee Hearing on HB 1316
Testimony from the ND Land Title Association
3/20/13

Good afternoon Mr. Chairman and Members of the Committee,

The title insurance, closing services industries help drive our nation's economy through the safe and efficient transfer of real property. In the current housing market these services are increasingly important for the confidence of lenders to provide loans to credit worthy homebuyers. Because we provide proof that people own their homes, they can use real estate capital to grow their assets and stimulate the economy. Americans close their loans faster than any other country – in as little as 30-45 days on average. And the speed of that transaction saves consumers tens of billions of dollars annually in additional interest costs.

Our work also provides benefits to society that go largely unrecognized. At no cost to taxpayers, our industry nationally collects \$1.75 billion per year in back income taxes, \$3 billion per year in delinquent real estate taxes, \$325 million per year in delinquent child support payments, and we pay \$170 million per year to purchase copies from local governments. These benefits are provided by an industry in which 65% of the companies have 1-3 employees and gross less than \$250,000 per year. We are main street small businesses making a big difference.

What we do can be a little confusing. There are two distinctly different sides to our business, title insurance which protects the legal title to the property and closing or settlement services. The settlement or closing side of our business, which is the handling of funds to close a real estate transaction, is what we are here today to discuss. Due to mono-line statutes we cannot provide insurance outside of title insurance to the real estate closing side of our business. This activity would be considered credit risk and not title risk.

To protect the consumers, funds in a real estate transaction must held in "trust". That is each consumer has a separate accounting of their funds in a sub-trust account. These trust accounts are regulated by the FDIC, RESPA and federal agencies that provide guidance and regulation to ensure the funds are never comingled and are never used for operations. We take these requirements very seriously to ensure funds are available for each individual transaction. However, despite all efforts fraud still exists which is why sound public policy such as Good Funds Statutes are necessary.

Good Fund statutes ensure that the money brought to the closing table is valid. This is a much lesser standard than “collected” funds which you may recognize if you deposit a large check or cashier’s check. Banks will not make those funds irrevocably available until they are collected upon through the Federal Reserve. Good Funds statutes provide a guideline for acceptable risk to ensure funds are available to efficiently close real estate transactions.

One of the most serious financial crimes in America is check fraud and it’s on the rise. According to the Office of the Comptroller of the Currency, more than 1.2 million fraudulent checks are written every day—more than 13 per second. Losses this year will exceed \$20 billion. These check fraud gangs are hardworking and creative. Today they are able to obtain MICR ink, seven color checks with security ribbons and holograms making it nearly impossible to tell the difference between a fraudulent check and one that is real.

If you’ve had the opportunity to watch “Catch Me if You Can” you will see how easy the infamous master of check fraud turned FBI consultant Frank Abagnale took the banking system for millions. Frank, an expert in check fraud, states that because punishment for fraud and recovery of stolen funds are so rare, prevention is the only viable course of action. Company standards alone cannot protect funds and good public policy is necessary.

When a fraudulent check is presented to a title company and used in a real estate transaction neither the title insurance policy or as you will hear a story the company’s E&O policy will protect the consumer for these missing funds. Normally settlement agents will have several parties’ earnest money, or loan funds on account at any given time and one bad check on an escrow account takes that money from the innocent third parties. When these losses become serious enough the settlement agent may not have the resources to reimburse their escrow account.

A good example is a title company here in ND that lost more than \$200,000 on a bad check. Luckily that company was solvent enough to reimburse its escrow account from operations to cover the shortage. However, most agents in ND fall into the small business category and gross less than \$250,000 per year. Many of these companies simply would not have the resources to reimburse the trust account. This can result in an agent defalcation which automatically shuts the business down and the innocent parties left holding the “empty” bag. The consumer who’s down payment on their home is nowhere to be found and they are the party harmed. Further, with lack of access to title companies in many parts of the state already, service to these areas would become additionally challenging with fewer companies.

We are a small state with big things happening and although we all appreciate the good old days of how business was conducted in markets such as the one I work in, very few dollars are from inside the state and our real estate closings are rarely with our neighbors anymore. The majority of development is now by out of state developers I have never met. But fraud doesn't just come from out of state. See Attachment – State Bank of Munich FDIC Alert.

We need public policy to ensure the funds of innocent consumers are not at risk of third party fraudulent checks. Public policy should also support a level playing field to protect consumers from companies who may irresponsibly take cashier's checks to rush a closing to garner market share. Taking these certified checks for rushed closings "at best" saves one day only serve to increase the chance of fraud.

HB 1316 which comes to you from many hours of work with all interested parties including the ND Realtors and Lending Community significantly enhances the ND Good Funds law to make it more workable for commerce and continue to provide necessary public policy.

Two amendments are still needed to ensure the flow of commerce on our border towns.

Pg. 2 Line 18. Delete "this state" and insert North Dakota, South Dakota, Minnesota and Montana.

Pg. 3 Line 14 after "disclose" insert to the seller

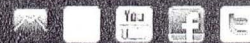
We would ask the committee to amend the bill provide a Do Pass recommendation.

Thanks you, Nick

North Dakota Land Title Association Legislative Committee Chair Nick Hacker (701) 770-3054

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Special Alerts

SA-51-2010
May 13, 2010

TO: CHIEF EXECUTIVE OFFICER (also of interest to Security Officer)
SUBJECT: Counterfeit Cashier's Checks
Summary: *Counterfeit cashier's checks bearing the name The First State Bank of Munich, Munich, North Dakota, are reportedly in circulation.*

The First State Bank of Munich, Munich, North Dakota, has contacted the Federal Deposit Insurance Corporation (FDIC) to report that counterfeit cashier's checks bearing the institution's name are in circulation.

The counterfeit items display the routing number **091302762**, which is assigned to The First State Bank of Munich. The items also display the following security feature statement embedded within the darkened top border: "THIS DOCUMENT CONTAINS SECURITY FEATURES." The words "CASHIERS CHECK" (without an apostrophe) are displayed in the lower-left corner.

Authentic cashier's checks display the following security feature statement embedded within the darkened top border with rounded corners: "ORIGINAL CHECK IS PRINTED ON CHEMICAL REACTICE PAPER AND HAS MICRO PRINTING IN THE SIGNATURE LINE." The words "CASHIER'S CHECK"(with an apostrophe) are displayed in the lower-left corner. The numerical dollar amount of the check is enclosed in a box on the right side of the checks.

Copies of a counterfeit item and an authentic check (VOID) are attached for your review. Be aware that the appearance of counterfeit items can be modified and that additional variations may be presented.

Any information you have concerning this matter should be brought to the attention of:

Maria Hoffman
Vice President of Operations
First State Bank of Munich
416 Main Street
P.O. Box 9
Munich, North Dakota 58352
Telephone: (701) 682-5331
Toll-Free: (800) 859-2035
Fax: (701) 682-5334
E-mail: Mariah@fbsbmunich.com

Information about counterfeit items, cyber-fraud incidents and other fraudulent activity may be forwarded to the FDIC's Cyber-Fraud and Financial Crimes Section, 550 17th Street, N.W., Room F-3054, Washington, D.C. 20429, or transmitted electronically to alert@fdic.gov. Questions related to federal deposit insurance or consumer issues should be submitted to the FDIC using an online form that can be accessed at <http://www2.fdic.gov/starsmail/index.asp>.

(1)

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Title.03000

Adopted by the Industry, Business and Labor
Committee

March 20, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1316

Page 2, line 18, after the second "state" insert ", Minnesota, Montana, or South Dakota"

Page 2, line 19, after "agent" insert "in the state of North Dakota, Minnesota, Montana, or South Dakota"

Page 3, line 14, after "disclose" insert "to the seller"

Renumber accordingly