

**2015 HOUSE JUDICIARY**

**HB 1169**

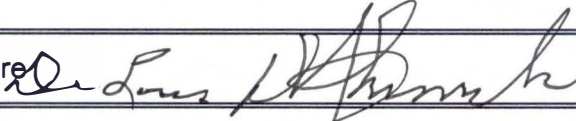
# 2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1169  
1/20/2015  
22218

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the exemption of transfers on death deeds from required statements of full consideration and recording of transfers on death deeds without regard to taxes.

## Minutes:

**Chairman K.Koppelman:** Opened the hearing on HB 1161 with testimony in support.

**Rep. L. Klemin:** Two sessions ago we enacted the Uniform Real Property Transfer on Death Act. It allows the real property owner execute a transfer on death deed which can convey real property to the designed grantee upon the death of the grantor. That deed is not effective until the transfer dies. There is no consideration to do this. In order to be effective the transfer on death deed must be recorded before the transfer dies. That person who is alive retains the right to own and use this property. The person who is to receive the property is not even required to be notified that they are the reception of that property. The Act also allows the transfer to revolt that transfer at any time. If the person receiving the property does not survive the transfer then that transfer lapses. It goes to someone else that might be named in the TOD deed then it would become a part of the estate and be handled in accordance with his estate plan. In order to record the deed there are a couple of requirements that have to be met. 11-18-02.2 requires a statement of full consideration to be filed with the state board of equalization or the recorder or for the full consideration to be stated on the face of the deed. We are usually talking about the amount paid for the transfer of the property. There are exceptions to those requirements and they are laid out in the statute. If there is an exception it has to be stated on the deed. All this bill does in Section 1 adds another exception because there is no consideration. The deed isn't even effective until the person dies. Section 2 relates to the requirement that before you can record a deed you have to get a tax clearance from the county auditor because if there are taxes owing on real property you cannot record the deed until the taxes are brought current.

**Rep. Kretschmar:** Does the bill the way you have amended it cover the situation where the transfer wants to revoke this transfer?

**Rep. L. Klemin:** I think that would apply. Maybe we do need to tinker with this a little bit based on what you said.

**Rep. Mary Johnson:** So these two items just add TOD's to the exceptions for a statement of full consideration?

**Rep. L. Klemin:** Yes that is correct.

**Rep. G. Paur:** How does this differ from life estates?

**Rep. L. Klemin:** Life estate is created when someone transfers property to a person as a life tenant and to someone or retains a life tendency and names someone else as the remainder man. A remainder man is the property owner who gets title to the property when life tenant dies. A TOD deed however deeds the property to a designed person who is not a remainder man and would get that property when the person dies. It is like a payable death account at a bank.

**Tony Weiler, Executive Director of the State Bar Assoc.:** We support this legislation. I also bring support from our real property trust and probate section of the State Bar Association, which is our largest section. The ND Land and Title Association supports even though I don't represent them.

Opposition: None

Neutral: None

Hearing closed.

**Rep. L. Klemin:** Rep. Kretschmar raised a good point about what happens when you have an instrument revoking a transfer on death deed. The TOD Act does have a section on instruments on revoking and transfer on death deeds which could be another TOD deed or it could be some other type of instrument. I think we should reference that type of instrument so the amendment I am proposing is on line 8 & 11 after the word deed insert "or revocation instrument".

**Chairman K.Koppelman:** for clarification of the committee the proposed amendment is on page 1, line 8 after the word deed or revocation instrument would be inserted and also on line page 1, line 11.

**Proposed amendment moved by Rep. L. Klemin: Seconded by Rep. Kretschmar**

**Voice Vote Carried.**

**Do Pass As Amended Motion Made by Rep. Maragos; Seconded by Rep. K. Wallman:**

Discussion: None

House Judiciary Committee

HB 1169

January 20, 2015

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**Roll Call Vote:**   13   Yes   0   No   0   Absent   **Rep. K. Wallman:**

8/1-20-15

January 20, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1169

Page 1, line 8, after "deed" insert "or revocation instrument"

Page 1, line 11, after "deed" insert "or revocation instrument"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1169**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0578.02001.03000

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. L. Klemin: Seconded By Rep. Kretschmar

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment: \_\_\_\_\_

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

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1169**

House JUDICIARY Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: 15.0578.02001.03000

Recommendation: ☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐ \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. K. Wallman

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment: Rep. K. Wallman:

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

**REPORT OF STANDING COMMITTEE**

**HB 1169: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1169 was placed on the Sixth order on the calendar.

Page 1, line 8, after "deed" insert "or revocation instrument"

Page 1, line 11, after "deed" insert "or revocation instrument"

Renumber accordingly



**2015 SENATE JUDICIARY**

**HB 1169**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1169  
3/16/2015  
24901

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kathie Oliver for Dawn Penrose*

**Minutes:**

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Chairman Hogue opened the public hearing on HB 1169. Representative Larry Klemin was on-hand to introduce the bill.

Representative Klemin: District 47. See attachment #1.

Chairman Hogue: Do our county auditors and treasurers going to be able to tell the difference between transfer on death deed and a regular deed and a life estate transfer?

Representative Klemin: It seems to me that there is some requirement for that to be noted but without looking at the chapter I cannot be sure.

Chairman Hogue: Do they have to look at the granting clause and the deed to figure out if it is a transfer on death deed?

Representative Kelmin: In section 31.1-32.106 which deals with the requirements on the transfer on death deed it says that it must state the transfer to the designated beneficiary is to occur at the death.

Chairman Hogue: That is the language that they would look to in order to verify that it is a transfer on death deed.

Representative Kelmin: I would say that the attorneys that prepare these have to contain that requirement that I just read.

Chairman Hogue: The key feature of this deed is to differentiate from a life estate grant, the transfer or granter can pull it back and he can pledge it.

Representative Kelmin: The grantor is retaining a life estate subject to the right of the remainder and the grantee would then only have a life estate and cannot change his life later unless the remaining man agrees.

Senator Casper: In section 1 if we are having a transfer on death deed I would not see a consideration so I would have to go back and pull the previous deed if I was trying to establish what was paid for the property?

Representative Kelmin: The grantee in a transfer on death deed doesn't pay anything.

Chairman Hogue: So I am guessing that another policy to exempt this from a statement is very often the transferee is a family member.

Representative Kelmin: That would be the usual case.

There was no further testimony; Chairman Hogue closed the public hearing on HB 1169.

A motion for a do pass was made by Senator Armstrong with a second by Senator Luick, roll was taken, the motion passed on a 6-0-0 count with Senator Casper carrying the bill to the floor.

Date: 3/16/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 1169

Senate

**JUDICIARY**

Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Armstrong Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Casper

**REPORT OF STANDING COMMITTEE**

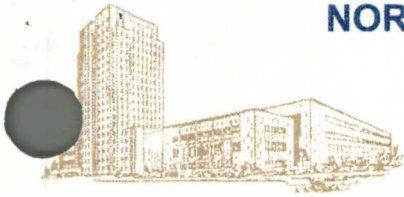
**HB 1169, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1169 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1169**

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# NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Lawrence R. Klemin

District 47  
1709 Montego Drive  
Bismarck, ND 58503-0856

Residence: 701-222-2577  
[lklemin@nd.gov](mailto:lklemin@nd.gov)

## COMMITTEES:

Judiciary  
Political Subdivisions, Chairman

### TESTIMONY OF REP. LAWRENCE R. KLEMIN

#### SENATE JUDICAIY COMMITTEE

HOUSE BILL NO. 1169

MARCH 16, 2015

Mr. Chairman and members of the Senate Judiciary Committee, I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB1169, relating to transfer on death deeds.

Transfer on death deeds were authorized by the Legislature in 2011 in Chapter 30.1-32.1-10 of the North Dakota Century Code. A transfer on death deed is an estate planning device in which an owner of real property can transfer in interest in that real property to one or more beneficiaries named in the deed in advance of the death of the transferor. The deed must be recorded with the County Recorder in the county where the real property is located before the death of the transferor and is not effective until the death of the transferor. During the life of the transferor, the transferor has the right to use the property or to encumber it by a mortgage or other lien. The transferor also has the obligation to pay the real estate taxes and special assessments on the property. A beneficiary must survive the death of the transferor in order to take title to the property. A transferor can also revoke the transfer by recording a revocation instrument with the County Recorder. There is no requirement that a beneficiary know anything about the transfer on death deed.

#### Section 1 of HB1169:

Section 11-18-02.2 provides that a deed may not be recorded with the County Recorder unless the grantee certifies on the face of the deed either that the consideration shown on the deed is the full amount of the consideration paid for the transfer, or that the grantee has filed a report of the full consideration paid for the transfer with the State Board of Equalization (in the office of the State Tax Commissioner) or with the County Recorder, or that an exception to the statement of full consideration requirement applies. The exceptions are listed in Section 11-18-02.2(7). Section 1 of HB1169 adds a transfer on death deed to the list of exceptions for several reasons. First, consideration is not required for a transfer on death deed. Therefore the grantee, who is the beneficiary in a transfer on death deed, doesn't pay anything for the transfer of the

property. Second, the grantee, as the beneficiary, may not even know about the deed. Finally, the deed is revocable by the transferor. Consequently there is no reason to comply with the requirement about the full consideration. To clear up any question concerning this requirement, a transfer on death deed is added to the list of exceptions.

Section 2 of HB1169:

Section 11-18-02 provides that a County Recorder may not record a deed unless it bears a certificate of transfer from the County Auditor showing that all delinquent and current real estate taxes and special assessments have been paid. Section 11-18-03 provides for a number of exceptions to the requirement to obtain the certificate of transfer from the County Auditor. Section 2 of HB1169 adds a transfer on death deed to the list of exceptions in Section 11-08-03. Since the transferor retains the full right to use the property and must continue to pay the taxes and special assessments during the transferor's life, there is no reason to require the taxes and special assessments to be paid before a transfer on death deed can be recorded. Of course, if the transferor doesn't pay the taxes or specials, the property can be lost due to failure to make those payments as provided in other law.

I urge your support for passage of HB1169.



**11-18-02.2. Statements of full consideration to be filed with state board of equalization or recorder — Procedure — Penalty.**

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed any one of the following:

a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.

b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.

c. A statement of the full consideration paid for the property conveyed.

d. A statement designating one of the exemptions in subsection 7 which the grantee believes applies to the transaction.

2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation any one of the following:

a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.

b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.

c. A statement of the full consideration paid by the party for the manufactured home before the affixation.

3. The recorder may not record any deed unless the deed contains one of the statements required by subsection 1 or record any affidavit of affixation unless the affidavit contains or is accompanied by one of the statements required by subsection 2.

4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.

5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.

6. For purposes of subsection 1, the word "deed" means an instrument or writing whereby

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any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.

7. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:

- a. Property owned or used by public utilities.
- b. Property classified as personal property.
- c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
- d. A sale that resulted as a settlement of an estate.
- e. All sales to or from a government or governmental agency.
- f. All forced sales, mortgage foreclosures, and tax sales.
- g. All sales to or from religious, charitable, or nonprofit organizations.
- h. All sales when there is an indicated change of use by the new owners.
- i. All transfer of ownership of property for which is given a quitclaim deed.
- j. Sales of property not assessable by law.
- k. Agricultural lands of less than eighty acres [32.37 hectares].
- l. A transfer that is pursuant to a judgment.

8. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or that falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor.

**History.**

S.L. 1981, ch. 564, § 4; 1991, ch. 113, § 1; 2001, ch. 120, § 1; 2009, ch. 327, § 1; 2013, ch. 95, § 1.

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3/16/15

**11-18-02. Recorder not to record certain instruments unless they bear auditor's certificate of transfer.**

Except as otherwise provided in section 11-18-03, the recorder shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes. The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under section 57-02-08.3.

**History.**

S.L. 1897, ch. 126, § 95; 1899, ch. 135, § 1; R.C. 1899, § 1278; S.L. 1901, ch. 144, § 1; 1903, ch. 167, § 1; R.C. 1905, § 1597; S.L. 1907, ch. 219, § 1; 1911, ch. 302, § 1; 1913, ch. 115, § 1; C.L. 1913, § 2212; S.L. 1915, ch. 252, § 1; 1925, ch. 211, § 1; 1925 Supp., § 2212; S.L. 1927, ch. 271, § 1; 1931, ch. 121, § 1; 1941, ch. 139, § 1; R.C. 1943, § 11-1802; S.L. 1983, ch. 150, § 3; 1993, ch. 100, § 2; 2001, ch. 120, § 1; 2005, ch. 545, § 2.

### **11-18-03. Instruments entitled to record without regard to taxes.**

The following instruments may be recorded by the recorder without the auditor's certificate referred to in section 11-18-02:

1. A sheriff's or referee's certificate of sale on execution or on foreclosure of a mortgage.
2. A mineral deed conveying oil, gas, and other minerals in or under the surface of lands.
3. A personal representative's deed or any document terminating joint tenancy or a life estate or any judgment or decree affecting title to real estate, which must be presented to the auditor's office prior to being placed of record in order to allow the auditor to make such changes in the tax rolls of the auditor's office as may be necessary.
4. Any deed conveying to the state, or to any political subdivision or municipal corporation thereof, any right of way for use as a public street, alley, or highway.
5. Any plat, replat, or auditor's lot accompanied by a resolution requesting the recording of the plat, replat, or auditor's lot by the governing body of a political subdivision.
6. A statement of succession in interest to minerals deemed to be abandoned under chapter 38-18.1.

#### **History.**

S.L. 1897, ch. 126, § 95; 1899, ch. 135, § 1; R.C. 1899, § 1278; S.L. 1901, ch. 144, § 1; 1903, ch. 167, § 1; R.C. 1905, § 1597; S.L. 1907, ch. 219, § 1; 1911, ch. 302, § 1; 1913, ch. 115, § 1; C.L. 1913, § 2212; S.L. 1915, ch. 252, § 1; 1925, ch. 211, § 1; 1925 Supp., § 2212; S.L. 1927, ch. 271, § 1; 1931, ch. 121, § 1; 1941, ch. 139, § 1; R.C. 1943, § 11-1803; S.L. 1955, ch. 114, § 1; 1957 Supp., § 11-1803; S.L. 1963, ch. 114, § 1; 1985, ch. 164, § 1; 2001, ch. 120, § 1; 2005, ch. 103, § 1; 2007, ch. 313, § 1.