

2015 SENATE POLITICAL SUBDIVISIONS

SB 2180

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2180
1/22/2015
Job Number 22355

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to unrecorded conveyances.

Minutes:

Attached testimony#1,#2

Chairman Burckhard opened the hearing on SB 2180. All senators were present.

Senator Holmberg (:41-2:45) You have received a copy of the background and the information. The bill was put in by Senator Holmberg, it was done on behalf of Mr. Shaft on behalf of the real property section of the State Bar Association.

Tony Weiler Executive Director of the State Bar Association of North Dakota. I represent almost 2,900 licensed North Dakota lawyers. As Senator Holmberg stated this bill really came from a Real Property Trust and Probate section. Grant Shaft is the chair of that section and he's been chairing that section for years and was a member of the Legislative body at one point. Mr. Shaft provided written testimony #1. The bill came forth just one session ago, and now because of some unattended consequences primarily dealing with leases, we are asking the legislature to delete that language. I have had a chance to speak with Dana Bohn with the North Dakota Farm Credit Council, and she and her legislative council have a chance to look at it and they think there might be something that can be done with this legislation that could leave the language in about the unrecorded conveyances, but yet maybe deal with the issue of leases. If you could hold the bill for a while so we can maybe work on that, we would support having that discussion. Our testimony is in support of this on behalf of the Association and the Real Property Trust Probate section of the Association.

Senator Anderson asked Tony if I understand this section it means that if one of these old farmers buys a piece of property from his neighbor, and never bothers to record it, then he kind of loses the title to his property, is that what I am reading here?

Tony Weiler replied the deal with the unrecorded conveyances that there may be a situation in which you have a unrecorded conveyance, and you have never gone ahead and recorded that conveyance. But if the person had an idea or knowledge of it, then they can't claim that the unrecorded conveyance was no good. It was no longer valid.

Senator Bekkedahl asked, Tony then to follow up on that. I am giving you an instance and you tell me is this is kind of what this is addressing. There is an oil and gas lease in western North Dakota and the project is drilled, part of the acreage becomes in question, because somebody has submitted a question on the lease after it was drilled, the party that thought they owned the mineral acres was not being paid, finally, questioned it, and was told because somebody came forward and said that there Father bought those mineral acres in the 1930's in a bar on a napkin, and it wasn't recorded, then that put the whole thing in question. Obviously, the party that thought had owned the mineral acres had no recognizance of that ever happening, but I know it created a lot of problems. Does this address those kinds of things as well or is it too sophisticated for it to be discussed here?

Tony Weiler replied I really wish that Grant Shaft was here now. What the law did is in the last session, it indicated that if you had an unrecorded conveyance you could not come in and say I am questioning the recorded conveyance. I am questioning that conveyance because we've had this forever, and we cannot get access to this property or have clear title to this property. So, what we they did last session, the person who had that unrecorded conveyance could not question the good faith of a recording party unless it could be established that the recording party had knowledge. If I've known for years that you've had those minerals and I am racing to the court house, it used to be a notice race or race notice. It was like who could get their conveyance in first and if I knew you had that property but I could get a recorded conveyance in, I could take good title to that property. Now, what you did last session was said, that the recorded conveyance is going to take precedence unless and until that person had notice of the recorded conveyance. Really the law wants you to have recorded titles so that people have good; and show good title, so what they did here was to solidify that unless you had some sort knowledge or notice of that conveyance. So if you've known for years that mineral holder had those, then you have notice.

Senator Bekkedahl replied the difficult part of that is how do you prove that somebody had known about the conveyance?

Tony Weiler replied that is always an issue. It is a fact issue, it's the reason why voters do discovery. It is the reason why they bring a fact based issues into court. It's one of the reasons why there are disputes. There are fact based issues, and sometimes you have to have juries determine those issues. Sometimes you have to have judges determine those issues. I think what our friends with the Farm Credit Council are talking about is what we are doing is saying; we are taking out something that really protects recorded conveyances and I think they want the opportunity to talk to us about it. Also we want to talk with Mr. Shaft about the unattended consequences dealing with leases. If they have some concerns about that we could work with it and perhaps it is best to leave this kind of language in there to make sure we're recording conveyances, and also then work on the issue with respect to leases.

Pat Ward (10:21-11:08) Attorney here in Bismarck and I represent the North Dakota Land and Title Association which is the title insurance company. We support this bill. There has been some confusion since this went into effect 3 years ago, people are recording a lot of additional documents that wouldn't have had to be recorded before that, and so the point of this I think is to eliminate that confusion.

Dana Bohn is here representing the North Dakota Farm Credit Council (11:53-~~4:21~~) who is in front of the committee testifying in soft opposition to this bill. **Written testimony #2.** Mike O'Keefe from the Farm Credit Services of Mandan and he does work with this, so if there were questions from the committee that he would be able to address he would be happy to come up as well.

Chairman Burckhard closed the hearing on SB 2180.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2180
1/29/2015
Job Number 22825

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to unrecorded conveyances

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for discussion on SB 2180. All senators were present.

Chairman Burckhard Dana Bohn chatted with Senator Burckhard and she said they decided to just go ahead with this. Whatever they were looking for they did not come up a reason to change it.

Senator Bekkedahl wasn't this the one, where it was passed the last session and they found some problems with the language as it was being interpreted and used. They wanted this corrective language to come back because of its implementation, it had some unintended consequences. Is this the one that I remember?

Chairman Burckhard shared that North Dakota Farm Credit Council, Dana Bohn, said they needed more time to look at it.

Senator Bekkedahl shared that Grant Shaft the attorney had put this in, and his comment was that the intended consequences of this were actually not met, because of the original language and they wanted to strike the language at the bottom of the bill that was in the last session because that would re-correct the unintended consequences. This is how I had my notes here.

Chairman Burckhard my notes suggested that Tony Weiler said to hold the bill for a while, and they would get back to us. I don't recall the specifics of it. Since then, their lobbyist or Farm Credit Council lobbyist said to just go ahead and leave it. Go ahead with it as it is. So that is what I do know.

Senator Bekkedahl I would move a Do Pass recommendation on SB 2180.
Senator Grabinger 2nd

Senate Political Subdivisions Committee

SB 2180

January 29, 2015

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Roll call vote

6 Yea, 0 No, 0 Absent

Motion passes

Carrier: Senator Bekkedahl

Date: 1.29.15
Roll Call Vote: /

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2/80

Senate Political Subdivisions 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. Bekkedahl Seconded By Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bekkedahl

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

REPORT OF STANDING COMMITTEE

SB 2180: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was placed
on the Eleventh order on the calendar.

2015 HOUSE POLITICAL SUBDIVISIONS

SB 2180

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2180
3/6/2015
24450

- ☐ Subcommittee
☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to unrecorded conveyances

Minutes:

Testimony 1

Chairman Klemin: Opened hearing on SB 2180

Tony Weiler: Introduced the bill for Senator Holmberg- I am giving you Grant H. Shaft's testimony (testimony 1) this bill changes and reverses law put into act last session. I will try to explain the reason for you. It removes the last sentence of section 47-19-41 which was added during the last session. It was intended to clarify the priority between the recorded document and an unrecorded document in the event that there was a challenge to the good faith of the recorded document. The priority of the document is usually established in the order it was recorded, however, in some instances a party may not record a document and could claim that an unrecorded document had priority over a recorded document if the holder of the document had actual or constructive knowledge. Last session that was intended to underscore the importance of recording and eliminated any potential challenge to the priority of recorded document based on constructive knowledge, therefore it had to be actual knowledge. Following that in effect the section and practitioners had an opportunity to apply the new language and determine that there could be some unintended consequences. The bill actually eliminated the duty of inquiry that has existed forever. This bill changes and reverses law that was put into effect two years ago.

Chairman Klemin: Was that language put into law at the request of the real property probate and section?

Tony Weiler: Yes

Patrick Ward: I represent the North Dakota Land and Title Association. We support this bill because there have been unintended consequences with the previous bill.

Representative Beadle: Move a do pass

Representative Zubke: Second

House Political Subdivisions Committee

SB 2180

3/6/2015

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A Roll Call Vote Was Taken: Yes 13, No 0, Absent 1 (Oversen)

Motion Carries

Representative Kretschmar will carry the bill

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2180

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

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

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Beadle Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen		
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 13 No 0

Absent 1 (Oversen)

Floor Assignment Kretschmar

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

motion carries

REPORT OF STANDING COMMITTEE

SB 2180: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2180 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2180

SB2180
1-22-15
#1.1

SENATE BILL 2180
SENATE POLITICAL SUBDIVISIONS HEARING
SENATOR BURCKHARD, CHAIRMAN
JANUARY 16, 2015 22nd 9:45
GRANT H. SHAFT, REGISTER LOBBYIST #423

TESTIMONY OF GRANT H. SHAFT ON BEHALF OF
REAL PROPERTY, PROBATE AND TRUST SECTION OF THE STATE BAR
ASSOCIATION OF NORTH DAKOTA

Mr. Chairman and members of the Committee:

My name is Grant H. Shaft and I am a licensed North Dakota attorney and for the past 22 years have chaired the Real Property, Probate and Trust Section of the State Bar Association of North Dakota ("the Section). The Section is the largest within the Bar Association and is comprised of attorneys who concentrate their practices in the areas of real property, estate planning, probate and trust work. My testimony today, in support of Senate Bill 2180, is on behalf of the Section.

For purposes of background, at the request of the Section, Senate Bill 2170 was introduced this past legislative session with two primary purposes. First, North Dakota Century Code Section 47-19-41 contained some antiquated language that needed to be brought in line with current legal terminology. Second, and more importantly, Senate Bill 2170 added a new sentence to the end of Section 47-19-41 as follows:

"The holder of an unrecorded conveyance may not question the good faith of the first recording party unless it can be established that the first recording party had actual knowledge of the existence of the unrecorded conveyance."

This language was intended to clarify the priority between a recorded document and an unrecorded document in the event there was a challenge to the good faith of the recorded document. For the most part, a document's priority (in relation to real estate), is established by the order in which it is recorded. However, in certain instances, a party could claim that an unrecorded document had priority over a recorded document if the holder of the recorded document had "actual" or "constructive" knowledge of the existence of the unrecorded document. The new language in Senate Bill 2170, was intended to underscore the importance of recording documents and eliminated any potential challenge to the priority of a recorded document based on "constructive" knowledge. Senate Bill 2170 was unopposed and was passed into law and now exists as NDCC Section 47-19-41.

Following the 63rd Legislative Session, the practicing bar has had the opportunity to apply the new language in Section 47-19-41 and we have determined that the new language has resulted in some unintended consequences. Without delving too deeply into the body of law surrounding a person's duty to inquire vis a vis actual or construction notice, the Section

has determined that the new language may actually eliminate the duty of inquiry that has existed forever. By eliminating the only consequence of ignoring a person's duty to inquire, the new language in Section 47-19-41 may have effectively eliminated the duty.

The Section had the opportunity to discuss Section 47-19-41 at great length at its annual meeting in early December of 2014. The Section acknowledged that in circumstances such as a lessee's interest in real estate, the new language in Section 47-19-41 could be used by a party purchasing the building to ignore the leasehold interests altogether unless the lessee had recorded notice of their leasehold interest. Obviously, it would be a great and unintended burden to require all lease interests to be recorded. This is just one of a number of practical examples that illustrate how the new Section 47-19-41 overreached its original intention.

For this reason, the Section requested that Senate Bill 2180, which you have before you, be introduced. The sole purpose of Senate Bill 2180 is to eliminate the final sentence in Section 47-19-41 that was added at our request during the last session.

I urge your support of Senate Bill 2180. Thank you.

Grant H. Shaft
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North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

SB 2180
1-22-15
#2.1

Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
SB 2180
January 22, 2015

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) to express our opposition to SB 2180.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$7.5 billion in credit and financial services to more than 19,500 customers.

SB 2180 proposes removing language that was added during the 2013 Legislative Session through SB 2170 that states the holder of an unrecorded deed on a piece of real property may not question the good faith of the holder of a recorded second deed for the same property unless it can be established the recorded deed holder had actual knowledge of the existence of the unrecorded deed.

The North Dakota Farm Credit Council believes this language creates a stronger incentive for individuals to get deeds recorded. As mortgage lenders, Farm Credit associations want to ensure there are no unrecorded deeds relating to the properties that are seeking and receiving mortgage funding. The current language in the statute puts a higher burden on the original purchaser of a piece of property to record the deed and ensure no additional deeds are tied to that piece of property in the future.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

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FCS of North Dakota

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701-852-1265 • 800-264-1265
www.farmcreditnd.com

Although we don't support removing the language that was adopted last session because it will create uncertainty for both landowners and mortgage lenders and will lessen the incentive for property owners to record deeds, we recognize there may be unintended consequences. Therefore, we would like to work with the State Bar Association and anyone else who is interested to develop language that would clarify that recording deeds is still a priority before completely removing it as proposed in this bill.

For instance, the term "conveyance" as used in section 47-19-41 includes "every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except a will or power of attorney." So, that could include the conveyance of a leased interest in real property. Perhaps an alternative is to change the definition of conveyance to limit the application to certain conveyances.

I am joined today by Mike O'Keeffe, CEO of Farm Credit Services of Mandan, to help answer any questions you have regarding unrecorded deeds of real property.

Thank you for the opportunity to appear before you today to express our opposition to completely eliminating the intent of the language adopted last session.

SB 2180
3/6/2015
1.1

SENATE BILL 2180
HOUSE POLITICAL SUBDIVISIONS HEARING
REPRESENTATIVE KLEMIN, CHAIRMAN
MARCH 6, 2015
GRANT H. SHAFT, REGISTER LOBBYIST #423

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REAL PROPERTY, PROBATE AND TRUST SECTION OF THE STATE BAR ASSOCIATION
OF NORTH DAKOTA**

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I urge your support of Senate Bill 2180. Thank you.

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