

**2017 HOUSE JUDICIARY**

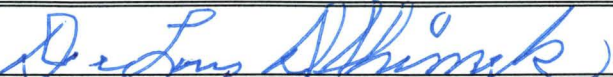
**HB 1057**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1057  
1/10/2017  
26738

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

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

Relating to the confidentiality of property and debt listing information of the parties to a divorce.

## Minutes:

1,2

**Chairman K. Koppelman:** Opened the hearing on HB 1057.

**Rep. Owens:** (0:30-3:36) During divorce property and debt is listed in the court and it is a matter of open record. I don't think it is necessary to the public to be able to see this. I do not think the newspapers does not need to know. Worried about a woman who is divorced and someone getting her personal information. Not sure why the newspapers need to know.

**Representative Hanson:** I think parties can already request their assets be sealed? Why can't they use that existing process?

**Rep. Owens:** I am not a lawyer, but I just saw an issue and wanted to bring it to you.

**Representative Hanson:** Why just make property and debt confidential? There is a lot of information that goes into a divorce proceeding?

**Rep. Owens:** I am not aware of all the information that goes into a divorce. This was glaring at me. This was more obvious for somebody to go after an individual. Even your name and birthdate and I can find out lots about a person.

**Representative Klemin:** In support of this bill. (Handout #1) I don't think we should see everything and it is wide open. (6:19-13:25) Went over handouts on ND Rules of Court and other handouts.

**Representative Magrum:** Could the reason they print it in newspapers is the creditors?

**Representative Klemin:** The listing in the newspapers of divorced is that they are granted is up to the newspaper for divorces. They only list the divorces in a particular county like

they do marriages. That is public information. It is what their assets or liabilities is not in the newspaper now. If the newspaper wanted to see all of that then this newspaper gives them a procedure they can follow to go get that information. This sets up a method to get this information.

**Representative Magrum:** Explained why he was concerned. He is a plumber and he was in the middle of a projects and filed for divorce so we could make sure we could get paid for the project. Your bill would not remove that; they would still print their names in the paper?

**Representative Klemin:** The newspaper can print anything they want to; except the property asset and debt listing under this bill.

**Representative Hanson:** Why not use the existing process instead of making this the default?

**Representative Klemin:** 1. People don't always think about this when they are doing it. 2. The clerk may say I don't want to do that. I don't think you have a good enough reason to seal these records. We are saying the default provision is they are sealed and if you want them open then go to the court and show good cause why they should be opened.

**Representative Hanson:** What other information could be filed and made public? Can things regarding minors be made public?

**Representative Klemin:** This bill is only for property assets and debt.

**Representative Satrom:** Do know what other states do on this?

**Representative Klemin:** No.

**Representative Paur:** Isn't it true ND has the most liberal open record laws in the nation.

**Representative Klemin:** We have a constitutional revision on open meetings and records are further elaborated upon in ND Century Code 44-04.1.

**Chairman K. Koppelman:** Technical looking at the amendment looking at an if filed with the court. There might be situations where things are filed with the court, but may not be part of this final judgement. Wondering if it should be an or or?

**Representative Klemin:** You bring up a good point.

**Chairman K. Koppelman:** If this were to be law the court could unseal something the law says if confidential by motion. Is the up to the court?

**Representative Klemin:** That is another good point. It is up to the court anyway.

Opposition: None

Neutral:



**Betsy Elsberry, Attorney in Bismarck:** See outlined Testimony #2 (23:40-30:31) Yes it would be on record and you would also have a settlement agreement that would reflect the assets and debts and it depends on the parties lawyer how much detail.

**Chairman K. Koppelman:** In view of those cases; when there is a settlement there would still be a judgement in the end. So those assets would be part of that settlement? When talk about the equitable distribution are the parties of a divorce asked to fill out the rule 8.3 information?

**Betsy Elsberry:** The rules of court provide that it is required to be filed 14 days prior to trial.

**Chairman K. Koppelman:** 14 days before the court date?

**Betsy Elsberry:** Yes. You would also have a settlement agreement.

**Representative Klemin:** You said that the property and debt listing has to be filed 14 days before trial; that is the Appendix E listing, but there is the Appendix D listing that has to be filed 14 days before the pre-trial conference and that has a lot of the same information.

**Betsy Elsberry:** Yes that is true. In the West you would have a pre-trial. This bill if it passes should apply to everything.

**Representative Roers Jones:** Would you clarify whether something was appealed to supreme court how would there be questions if the record was to be private?

**Betsy Elsberry:** My concern is if the public doesn't have access to those values and assets and debts how are we suppose track what the supreme court is deeming equitable?

**Representative Roers Jones:** How does the public having access would affect the supreme court's ability to make a judgement?

**Betsy Elsberry:** I don't see why it would affect the supreme courts ability to review the lower court's decision, but as a practitioner we are tracking supreme court case law.

**Representative Roers Jones:** I appreciate your concern for other attorney's to be able to use this as prior case law.

**Representative Klemin:** I don't know if the supreme court has to go through debt and assets listings and say the trial court was correct or incorrect. Does the supreme court go down and list every property asset and debt liabilities and say the trial court was right or wrong?

**Betsy Elsberry:** I would not say the supreme court is going to go through every single item on the property but they would have to know the net of the net estate is worth.

**Representative Klemin:** Does the supreme court do that?

**Betsy Elsberry:** They have to look at the value of the estate what is equitable.



**Representative Klemin:** In a trial court looking the procedure in a case where there is a property and debt listing filing and we have a trial and there is a judgement the way this bill is written would not in itself include the property and debts, but the trial court could still issue a judgement on everything and with respect to property and debts have an addendum that itself would be confidential and not the entire judgement.

**Betsy Elsberry:** I do think some district court judges will simply say I have attached the Appendix A; and the court has placed its values. I understand the intent of this bill; however, my concern is if the only documents that are confidential are listed to that 8.3 and the judgement I am not sure if it will be effective.

**Representative Hanson:** The burden is on the person who wants to keep things confidential.

**Betsy Elsberry:** That would be a concern.

**Representative Paur:** Divorce family law is a big part of the practice. How many cases reach the supreme court?

**Betsy Elsberry:** At least 90-95% of cases settle. A very small percentage of these cases are appealed.

**Representative Klemin:** When we are talking about cases settling

**Betsy Elsberry:** Yes I would agree. There is a very small amount of cases that settle out of court.

**Representative Klemin:** When we talk about cases settling; they don't always settle initially.

**Betsy Elsberry:** The process takes time and a small number of cases settle within a month.

**Representative Klemin:** If they settle on day one of the trial that property and debt listing would have been filed 14 days before that.

**Betsy Elsberry:** Yes.

**Chairman K. Koppelman:** Perhaps the financial statement should be a piece of this too.

**Betsy Elsberry:** It is in one of the appendixes to the rules of court.

**Chairman K. Koppelman:** Discussed work on family law issues.

**Betsy Elsberry:** This state does have the family law mediation program. Through this program the parties leave the process less hostile toward each other than they entered the process.

**Chairman K. Koppelman:** In those cases, where mediation occurs there is still a judgement by the court so the data that the bill is subject to would still be part of that court judgement?

**Betsy Elsberry:** Yes that is correct.

**Representative Klemin:** On the mediation thing; isn't there some confidentiality provisions that relate to the mediation process also.

**Betsy Elsberry:** Yes that is a good point. Under the Family Law Mediation Program any information discussed in either that or in ADR is confidential.

Hearing Closed

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1057  
1/10/2017  
26750

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the confidentiality of property and debt listing information of the parties to a divorce.

**Minutes:**

**Chairman K. Koppelman:** Reopened the meeting on HB 1057.

**Representative Maragos:** Didn't they offer a small amendment?

**Chairman K. Koppelman:** Yes it is a small amendment having to do with filed with the court and included with the judgement for divorce.

**Representative Roers Jones:** Ms. Elsberry said that they would track and send additional information.

**Chairman K. Koppelman:** I took that as neutral testimony so we will wait on this bill.

**Representative Paur:** I thought she said they had a meeting today.

**Representative Klemin:** She was talking about the legislative committee of the state bar association. This is not a bill that is supposed to make everything confidential. It is only directed at property asset and debt listing.

**Chairman K. Koppelman:** Rep. Klemin and Representative Roers Jones to get information for this bill. We will hold this bill and work on it.

Closed.



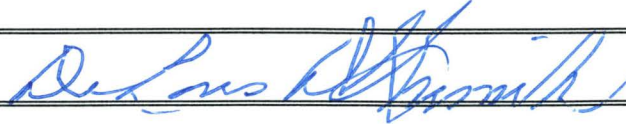
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1057  
1/11/2017  
26790

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the confidentiality of property and debt listing information of the 3 parties to a divorce.

## Minutes:

1, 2

**Chairman K. Koppelman:** Opened the meeting on 1057.

**Representative Roers Jones:** Mr. Weller, State Bar Assoc. said that the amendments proposed are probably ok but would check and get back to us.

**Chairman K. Koppelman:** (See attachment #1) Proposed amendment. Would it be enough to shield the records that the bill seeks to shield?

**Representative Roers Jones:** There is some concerns the bill may be unnecessary. The State Bar Association said that parties need access and we are not sure the inability to read case law from the supreme court on property and debt distribution and if they were confidential and if they had to bring that information back on appeal would the file lose its confidentiality status?

**Chairman K. Koppelman:** Many of those things were in her testimony. Losing confidentiality on appeal.

**Representative Roers Jones:** I am not sure how we would read supreme court files. Ms. Elsberry's concerns have grown more.

**Chairman K. Koppelman:** We represent the public and we need to look at who this was intended for.

**Representative Hanson:** Her concerns have grown even more on reconsidering

**Chairman K. Koppelman:** We really value the input of the bar. We represent the bar, but we also represent the public too.

**Representative Klemin:** We are trying to protect the information by the parties. It is a joint thing that is submitted. We are concerned about confidentiality and things are open record.

**Rep. Klemin made a motion to move the amendment. Seconded by Representative Maragos.**

Discussion:

**Representative Jones:** Should be have an/or?

**Representative Klemin:** Legislative counsel has a rule on that particular issue and they won't let us do that.

**Chairman K. Koppelman:** We are covered if we do or.

**VOICE VOTE CARRIED.**

**Representative Vetter:** This basically takes care of the confidentiality of assets. The drawback is different attorneys won't have the case law to study. When you weigh those two I side on the side of the general public.

**Representative Klemin:** The opinions of the district courts are not reported. The Supreme Court decisions are the only cases that get reported.

**Representative Hanson:** There was a concern that other financial statements other than those covered by amended bill.

**Representative Roers Jones:** The other financial statements that were talked about were related to that same 8.3 filing at other points to whether there would be a pre-trial conference or the filing that is required 14 days before trial. It is pretty rare in our court system that there would be other financial disclosures.

**Do Pass As Amended Motion Made by Representative Vetter: Seconded by Representative Johnston**

**Representative Hanson:** I think we already have a process and the bill is not needed.

**Representative Satrom:** This address when people are going through a vulnerable time and I think having the presence of mind to say be sure my stuff is sealed is not going to be on the top of their brain so I encourage we pass this.

**Representative Klemin:** The process of sealing records is quite extensive.

**Representative Roers Jones:** (19:11) Shared a story regarding this. This would be a step to handling this situation. I would recommend a do pass.

**Vote: 13 Yes 2 No 0 Absent; Carrier: Representative Roers Jones**

17.0230.01001  
Title.02000

1/11/17 DA  
Adopted by the Judiciary Committee

January 11, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1057

Page 1, line 9, after the first "is" insert "filed with the court or"

Renumber accordingly



2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Page 1, line 9, after the first "is" insert filed with the court or

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 Representative Klemin:    Seconded By Representative Maragos:

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

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

Absent \_\_\_\_\_

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

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

**VOICE VOTE CARRIED**

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1057**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 17.0230.0100

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 Representative Vetter:    Seconded By Representative Johnston:

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson		X
Vice Chairman Karls	X		Rep. Nelson		X
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 13 No 2

Absent 0

Floor Assignment : Representative Roers Jones:

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

**REPORT OF STANDING COMMITTEE**

**HB 1057: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1057 was placed on the Sixth order on the calendar.

Page 1, line 9, after the first "is" insert "filed with the court or"

Renumber accordingly



**2017 SENATE JUDICIARY**

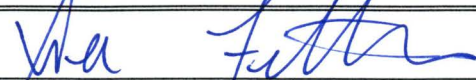
**HB 1057**

# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1057  
3/13/2017  
29077

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

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

Relating to the confidentiality of property and debt listing information of the parties to a divorce.

**Minutes:**                      **No written testimony**

**Chairman Armstrong** called the committee to order on HB 1057. All committee members were present.

**Mark Owens, North Dakota State Representative District 17**, briefly introduced and testified in support of the bill. No written testimony.

“This bill is the result of realizing that property and debt listings during divorce proceedings are public record, and while for a large number of people that is a not an issue, for some people it is. This could be an opportunity for some folks who are, shall we say, not so nice. They could access information and depending on the age of spouse after the divorce, they could become targets. It came to my attention that this may be better if it was kept confidential; the courts could access it if need be.”

**Senator Luick (1:25):** “Would you give me an example?”

**Representative Owens:** “You read about someone’s divorce and you know they have some money and you know you’re a less scrupulous individual, all you have to do is go to the court and find out. You can find out their assets, their holdings, then you could plan an attack, as they say.”

**Chairman Armstrong:** “A lot of times you’ll see people file divorces in different counties for this very reason.”

**Senator Nelson (3:00):** “Is confidential the right word? Or should the word be exempt?”

**Chairman Armstrong:** “Yeah, I’m going to check on that and we’ll make sure we stay consistent in other areas of the code.”

**Chairman Armstrong** closed the hearing on HB 1057.

**Senator Larson** motioned for a Do Pass. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Senator Osland** carried the bill.



**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1057**

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 Senator Larson Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Osland

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

**REPORT OF STANDING COMMITTEE**

**HB 1057, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1057 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1057

17.0230.01000

Sixty-fifth

Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1057**

#1  
1-10-17  
1057

Introduced by

Representatives Owens, K. Koppelman, Olson, Streyle, Klemin, Marschall  
Senators Laffen, Hogue

1 A BILL for an Act to create and enact a new section to chapter 14-05 of the North Dakota  
2 Century Code, relating to the confidentiality of property and debt listing information of the  
3 parties to a divorce.

**4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 14-05 of the North Dakota Century Code is created  
6 and enacted as follows:

**7 Property and debt listing information confidential - Exception.**

8 1. Except as provided in subsections 2 and 3, the property and debt listing of the parties  
9 to a divorce which is **filed with the court and** included in a judgment for divorce is a  
10 confidential record.

11 2. Upon providing written notice to all parties, any person may file a motion, supported by  
12 affidavit showing good cause, for access to the property and debt listing contained in a  
13 judgment for divorce.

14 3. The court shall allow access to the property and debt listing, or relevant portions of the  
15 information, if the court finds the public interest in granting access or the personal  
16 interest of the person seeking access outweighs the privacy interests of the parties or  
17 the parties' dependent children. In granting access the court may impose conditions  
necessary to balance the interests consistent with this subsection.



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1057  
1-10-17

# ND Rules of Court Appendix D

## RULE 8.3, N.D.R.C.T., PRETRIAL CONFERENCE STATEMENT

STATE OF NORTH DAKOTA, }  
County of \_\_\_\_\_ } In District Court  
\_\_\_\_\_ Judicial District

A.B., Plaintiff }  
vs. } Civil No. \_\_\_\_\_  
C.D., Defendant } RULE 8.3, N.D.R.C.T.,  
PRETRIAL CONFERENCE  
STATEMENT

### 1. PERSONAL INFORMATION

Full Name \_\_\_\_\_  
Present Mailing Address \_\_\_\_\_  
Employer \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Birth Date and Present Age \_\_\_\_\_  
Marriage Date \_\_\_\_\_  
Separation Date \_\_\_\_\_  
(Different Residences)  
Date(s) of Temporary Order(s), if any \_\_\_\_\_

Minor children born to this marriage or who will be affected by this legal action:

INITIALS	BIRTHYEAR	AGE	LIVING WITH
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Is the wife pregnant? Yes \_\_\_ No \_\_\_. If yes, the due date is \_\_\_\_\_. Are parenting rights and responsibilities of any child contested? Yes \_\_\_ No \_\_\_. If yes, attach a proposal your proposed parenting plan for each child.

### 2. EMPLOYMENT/INCOME

Provide the following data for each employer.

	HUSBAND	WIFE
A) Name of Employer	_____	_____
Length of Employment	_____	_____
Income Per Month:	_____	_____
(1) Gross Income	_____	_____
Guideline deductions:		
Federal Income Tax	_____	_____
State Income Tax	_____	_____
FICA/Medicare Health Insurance for Children	_____	_____
Union Dues	_____	_____
Mandatory Retirement	_____	_____
(2) Subtotal of Guideline Deductions	_____	_____
(3) Net Income (Line 1-Line 2)	_____	_____
Other guideline considerations	_____	_____
Specify:	_____	_____
(4) Subtotal of Other Deductions	_____	_____
(5) NET TAKE HOME PAY (Line 3-Line 4)	_____	_____

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1057  
1-10-17

Tax withholding figures  
above are based upon  
Married or Single tax-  
payer with # of exemptions:  
(Example M-4 or S-2)

B) Employment benefits: Identify all benefits in addition to wages including bonuses paid or due, automobile or travel expense reimbursement, other per diem compensation, memberships paid by the employer or in kind benefits.

C) Other Income:

(1)	Public Assistance	_____	_____
	Per Month (AFDC/GA)	_____	_____
(2)	Social Security,	_____	_____
	Including Child Benefits, Per	_____	_____
	Month	_____	_____
(3)	Unemployment/ Workers Comp	_____	_____
	Per Month	_____	_____
(4)	Interest Income Per Month	_____	_____
(5)	Dividend Income Per Month	_____	_____
(6)	Other Income Per Month	_____	_____
(7)	Last Year's Tax Refunds	Federal _____	Federal _____
		State _____	State _____

**3. CHILD SUPPORT/SPOUSAL SUPPORT**

A) Child or spousal support established in separate proceeding:

(1) Is either party entitled to child or spousal support from a separate proceeding?  
Yes \_\_\_ No \_\_\_ If yes, for each party entitled to child or spousal support, specify the amount: \$ \_\_\_\_\_.

(2) Is either party required to pay child or spousal support from a separate proceeding?  
Yes \_\_\_ No \_\_\_ If yes, for each party required to pay child or spousal support, specify the amount: \$ \_\_\_\_\_.

B) Child or spousal support established by temporary order in this proceeding:

(1) Is either party required to pay child or spousal support under a temporary order in this proceeding?  
Yes \_\_\_ No \_\_\_ If yes, specify the amount: Child Support \$ \_\_\_\_\_ Spousal Support \$ \_\_\_\_\_.

(2) Is any arrearage claimed under an existing temporary order?  
Yes \_\_\_ No \_\_\_ If yes, specify the amount: Child Support \$ \_\_\_\_\_ Spousal Support \$ \_\_\_\_\_.

**4. LIVING EXPENSES**

Specify the amount of your total monthly expenses \$ \_\_\_\_\_; and attach an itemized list of your monthly expenses.

**5. REAL PROPERTY:** (For Each Parcel of Property)

1. Description of Property \_\_\_\_\_

(a) In Possession of \_\_\_\_\_

(b) Date Acquired \_\_\_\_\_

(c) Purchase Price \$ \_\_\_\_\_

(d) Present FMV \_\_\_\_\_

(Date of Valuation) \$ \_\_\_\_\_

(e) First Mortgage Bal \$ \_\_\_\_\_

(f) Second Mortgage \_\_\_\_\_

Balance or Home \_\_\_\_\_

Improvement Loan \$ \_\_\_\_\_

(g) Net value \$ \_\_\_\_\_

(h) Monthly Payment \$ \_\_\_\_\_

(i) Income from Property \$ \_\_\_\_\_

**6. BUSINESS/FARM ASSETS** (For Each Asset)

1. Description of Asset \_\_\_\_\_

(a) In Possession of \_\_\_\_\_

(b) Date Acquired/Age \_\_\_\_\_

(c) Purchase Price \$ \_\_\_\_\_

(d) Present FMV (Date of Valuation) \$ \_\_\_\_\_

(e) Debt Balance \$ \_\_\_\_\_

(f) Net Value \$ \_\_\_\_\_

(g) Monthly Payment \$ \_\_\_\_\_

(h) Income from Property \$ \_\_\_\_\_

**7. FINANCIAL ASSETS** (For Each Asset)

1. Description of Asset \_\_\_\_\_

(a) In Possession of \_\_\_\_\_

(b) Date Acquired/Age \_\_\_\_\_

(c) Purchase Price \$ \_\_\_\_\_

(d) Present FMV (Date of Valuation) \$ \_\_\_\_\_

(e) Debt Balance \$ \_\_\_\_\_

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1057  
1-10-17

(f) Net Value \$ \_\_\_\_\_

**8. LIFE INSURANCE (For Each Policy)**

- (a) Name of Company \_\_\_\_\_
- (b) Policy No. \_\_\_\_\_
- (c) Type of Insurance \_\_\_\_\_
- (d) Face Amount \_\_\_\_\_
- (e) Cash Value \_\_\_\_\_
- (f) Loans \_\_\_\_\_
- (g) Insured \_\_\_\_\_
- (h) Beneficiary \_\_\_\_\_
- (i) Owner \_\_\_\_\_

**9. PENSION PLAN AND/OR PROFIT SHARING PLAN**

	Husband	Wife
(a) Through employment:		
(1) Value	_____	_____
(b) Private Plans (IRA, Keogh, SEP)		
Value	_____	_____
(c) Deferred Compensation Value	_____	_____
(d) Military Pension or Disability	Yes    No	Yes    No

**10. PERSONAL PROPERTY: (For Each Asset)**

A. Household Items in Husband's Possession		Value
Description of Item		
1. _____		_____
B. Household Items in Wife's Possession		Value
Description of Item		
1. _____		_____
C. Household Items in Joint Possession		Value
Description of Item		
1. _____		_____
D. Motor Vehicles (For Each Asset)		
1. Year, Make, Model	_____	
(a) In Possession of	_____	
(b) Market Value	_____	
(c) Encumbrances	_____	
(d) Net Value	_____	
(e) Monthly Payments	_____	
E. Boats, Campers, Snowmobiles, Trailers (For Each Asset)		
1. Year, Make, Model	_____	
(a) In Possession of	_____	
(b) Market Value	_____	
(c) Encumbrances	_____	
(d) Net Value	_____	
(e) Monthly Payments	_____	
F. Other Personal Property (For Each Asset)		
1. Description of Item	_____	
(a) In Possession of	_____	
(b) Market Value	_____	
(c) Encumbrances	_____	
(d) Net Value	_____	
(e) Monthly Payments	_____	

**11. DEBTS (Not listed previously)**

- A) 1. Secured debts:
- (a) Creditor \_\_\_\_\_
  - (b) Total Amount Owning \$ \_\_\_\_\_  
    (As of What Date) \_\_\_\_\_
  - (c) Monthly Payments \$ \_\_\_\_\_
  - (d) When Incurred \_\_\_\_\_
  - (e) Party Obligated \_\_\_\_\_
  - (f) Collateral \_\_\_\_\_
  - (g) Date of final payment \_\_\_\_\_

TOTALS:  
 Husband \_\_\_\_\_      Wife \_\_\_\_\_      Joint \_\_\_\_\_

B) 1. Unsecured debts: (Include Attorney's Fees and Costs)

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- (a) Creditor \_\_\_\_\_
- (b) Total Amount Owing \$ \_\_\_\_\_  
(As of What Date) \_\_\_\_\_
- (c) Monthly Payment \$ \_\_\_\_\_
- (d) When Incurred \_\_\_\_\_
- (e) Party Obligated \_\_\_\_\_
- (f) Consideration \_\_\_\_\_
- (g) Date of final payment \_\_\_\_\_

TOTALS:  
Husband \_\_\_\_\_ Wife \_\_\_\_\_ Joint \_\_\_\_\_

I hereby represent that the above is a complete disclosure of all property interests and liabilities, and that the values set forth are the best estimates of the property's market value.

\_\_\_\_\_  
(Plaintiff) (Defendant)

\_\_\_\_\_  
Attorney for (Plaintiff) (Defendant)

\_\_\_\_\_  
Attorney Identification Number

\_\_\_\_\_  
Address



# ND Rules of Court

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## Rule 8.3. Case management (Divorce cases).

(a) **Compulsory meeting.** Within 30 days after service of the complaint, the parties and their attorneys must meet in person or by electronic means to prepare a joint informational statement (in the form shown in appendix C) and a preliminary property and debt listing. The complaint and joint informational statement must be filed no later than seven days after the compulsory meeting. The parties must exchange information and documentary evidence relating to the existence and valuation of assets and liabilities. At a minimum, the parties must be prepared to exchange current paystubs, employment and income information, tax returns, preliminary pension information, and asset, debt and expense documentation. The parties must determine at the meeting what additional information is necessary in order to complete the case. The parties must decide at the meeting whether alternative dispute resolution methods are appropriate.

(b) **Scheduling order.** Within 30 days after the informational statement is filed, the court must issue its scheduling order. The court may issue the order after either a telephone or in-court scheduling conference, or without a conference or hearing if none is needed. The scheduling order may establish any of the following deadlines:

- (1) specific dates for the completion of discovery and other pretrial preparations;
- (2) specific dates for serving, filing, or hearing motions;
- (3) specific dates for completion of mediation/alternative dispute resolution;
- (4) a specific date for the parties to complete parent/divorce education;
- (5) a specific date for filing the property and debt listing;
- (6) specific dates for completion of parenting evaluation;
- (7) a specific date by which the parties will be prepared for the pretrial conference;
- (8) a specific date by which the parties will be prepared for the trial;
- (9) a specific date for identification of witnesses and documents; and
- (10) a specific date by which the parties will submit the parenting plans.

### (c) Pretrial conferences.

(1) Each party must complete a pretrial conference statement substantially in the form set forth in appendix D which must be served upon all parties and filed with the court at least 14 days prior to the date of the pretrial conference.

(2) Unless excused by the court for good cause, the parties and attorneys who will try the proceedings must attend the pretrial conference, prepared to discuss settlement. If a stipulation is

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reduced to writing prior to the pretrial conference, the case may be heard as a default at the time scheduled for the conference. In that event, only one party need appear. If a party fails to appear at a pretrial conference, the court may dispose of the proceedings without further notice to that party.

(3) If the parties are unable to resolve the case, in whole or in part, at the pretrial conference, the court must issue an order concerning any remaining discovery and motions, and identifying the contested issues for trial.

(4) Unless otherwise ordered, at least 14 days before trial, the parties must file a joint property and debt substantially in the form set forth in appendix E. Each asset or liability must be numbered separately.

# ND Rules of Court Appendix E

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## RULE 8.3, N.D.R.C.T., PROPERTY AND DEBT LISTING

STATE OF NORTH DAKOTA, }  
County of \_\_\_\_\_ }

In District Court  
\_\_\_\_\_ Judicial District

A.B.,                   Plaintiff }  
          vs.                }  
C.D.,                   Defendant }

Civil No. \_\_\_\_\_  
N.D.R.C.T. 8.3,  
PROPERTY AND DEBT  
LISTING

### ASSETS

	Husband	Wife	Court
REAL ESTATE			
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
BUSINESS/FARM ASSETS			
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
FINANCIAL ASSETS			
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
RETIREMENT/PENSION ASSETS			
10.	_____	_____	_____
11.	_____	_____	_____
12.	_____	_____	_____
VEHICLES			
13.	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____
HOUSEHOLD GOODS			
16.	_____	_____	_____
17.	_____	_____	_____
18.	_____	_____	_____
		DEBTS	
19.	_____	_____	_____
20.	_____	_____	_____
21.	_____	_____	_____
		SUMMARY	
REAL PROPERTY	_____	_____	_____
BUSINESS/FARM ASSETS	_____	_____	_____
FINANCIAL ASSETS	_____	_____	_____
RETIREMENT/PENSION ASSETS	_____	_____	_____
VEHICLES	_____	_____	_____
HOUSEHOLD GOODS	_____	_____	_____
DEBTS	_____	_____	_____
TOTAL	_____	_____	_____

DATED (Month) (Day), (Year).

DATED (Month) (Day), (Year).

\_\_\_\_\_  
Plaintiff  
Subscribed and sworn  
to before me on  
(Month) (Day), (Year).

\_\_\_\_\_  
Defendant  
Subscribed and sworn  
to before me on  
(Month) (Day), (Year).

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
Notary Public  
My Commission Expires:



- Intro
- Bill
  - As you know, HB 1057 is a Bill to create new legislation regarding the confidentiality of property and debt listing of parties to a divorce.
  - There are essentially two ways the parties' assets and debts are divided in a divorce: EITHER by stipulation/settlement, OR through trial before the Court.
    - In a settlement agreement and proposed Judgment provided to the Court,
      - Sometimes defining assets/debts it is as basic, as: "Each party is awarded their own retirement accounts, if any."
      - sometimes the settlement agreement and proposed judgment provide specifics of the assets--- such as: "John is awarded his IRA with Edward Jones ending in account no. 1234," and
      - Even if the specific name/type of the asset is provided, while sometimes the value of the asset is provided, I would state more often than not, the value of the asset is not provided—so the settlement agreement and proposed Judgment do not reflect if John has \$500 or \$500,000 in his Edward Jones IRA.
    - If a case goes to trial:
      - the Rules of Court provide that at least 14 days prior to trial, the parties must file a joint property and debt listing, which is essentially a chart that provides every piece of marital property, and what each spouse believes each piece of property is valued at.
      - Under ND law (14-05-24), the Court shall make an equitable distribution of the properties and debts of the parties. "What is equitable" has been analyzed and explained through case law.
      - The Court then uses this "Rule 8.3 property and debt listing" in addition to testimony and evidence, to equitably dividing the assets and debts of the parties.
  - So if a case settles, which a vast majority of cases do, it is likely that there will not be an 8.3 property and debt listing, and the amount of details that is provided in the settlement agreement and proposed judgment is for the most part up to the parties and their attorneys.
  - However, if a case goes to trial, the parties' assets/debts and their values will be public information by many ways: including the 8.3 property and debt listing, any evidence and testimony offered regarding the same, any memorandum opinion issued by the Court, and in the F of F, C of Law, Order for Judgment, and Judgment.
- So back to why I am here.
  - First, I am here as a member of the SBAND Legislative Committee. We met yesterday, and after reviewing the bill, we decided that we will recommend to SBAND BOG that we track and provide technical assistance on this bill. The BOG will be meeting this afternoon—and will act on the recommendations of the committee.



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- As for technical assistance, we wanted to note that as drafted, the bill indicates that “the property and debt listing of the parties to a divorce which is included in a judgment for divorce” is a confidential record. If the intent of the bill is to keep parties’ property and debts, and the values thereof confidential in divorce proceeding, we had concern that, as drafted, this bill will not do the same, as it will be public via other documents, as previously explained.
- As I explained previously, if an 8.3 is filed, that will not necessarily be a part of the judgment, so all financial laundry will be aired anyway.
- As for being a family law practitioner, I have discussed this bill with other family attorneys, and I was on a thread with several family law lawyers.
  - Some expressed that they do not have a real problem with attempting to protect the parties’ financial privacy, but they thought the bill missed the mark for the technical reasons I just explained.
  - Others have the following concerns:
    - Some expressed that the bill seems unnecessary—because for the vast majority of divorces—property and debt listings are not going to be that interesting—and this bill may be aimed at high net worth divorces. If there is a concern, a request can always be made to seal the file.
    - Another concern raised was that in the event of a motion for contempt because one party is not following the order- if the attorney filing the contempt motion was not the attorney prior to judgment—you would have to file a motion to access the case—which would be more cost to the public.
    - Further, since Courts must equitably divide property, if a case is appealed, while the NDSC would most certainly have access to the file, it is unclear how practitioners and the public would be able to track NDSC case law on equitable division—if that information were kept confidential.
    - Concerns as to how this bill will affect the parties, post-judgment.
      - For example, if a party needs a judgment to serve as direction for an entity (for example, the DOT, or a bank for refinancing) the part of the judgment needed will not be available whenever they may need it.
- Thank you for your time.

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17.0230.01000

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1057

Page 1, line 9, after the first "is" insert "filed with the court ~~and~~ *OR*"

Renumber accordingly

irregularity by the proper board, the state's attorney shall prosecute as provided in section 44-04-03.

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**44-04-16. Officer to provide blanks and records for office.**

Each county, city, township, or school district officer shall provide, at the expense of the county, city, township, or school district, as the case may be, such blanks and records as are necessary for making proper records and for transacting any official business connected with the office.

**44-04-17. Various officers' restrictions - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**44-04-17.1. Definitions.**

As used in this section through section 44-04-32:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. "Executive session" means all or part of a meeting that is closed or confidential.
5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
7. "Information technology resources" includes data processing hardware and software or technology support services necessary to facilitate a response to a request for electronic records.
8. "Law" includes federal statutes, applicable federal regulations, and state statutes.
9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:
  - (1) A quorum of the members of the governing body of a public entity regarding public business; or
  - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:
  - (1) A chance or social gathering at which public business is not considered;
  - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and
  - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.



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10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.
11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.
12. "Public business" means all matters that relate or may foreseeably relate in any way to:
  - a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
  - b. The public entity's use of public funds.
13. "Public entity" means all:
  - a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
  - b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
  - c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.
14. "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.
15. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.
16. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.
17. "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

**44-04-18. Access to public records - Electronically stored information.**

1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any.