

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1250

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1250
1/16/2019
30937

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Licensure of organization of a real estate salesperson, broker or broker associate.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing on HB 1250.

Rep Louser~District 5: Introduces HB 1250. We are adding one word, "broker" dealing with self-unemployment tax. Explains why.

6:40

Rep Kasper: You don't have a definition of sales person, broker or broker associate, can you get that?

Rep Louser: Yes, I'll get a copy.

Rep Kasper: Under the definition of a broker it will either be a person or corporation LLC.

Rep Louser: You will get it.

DeLynn Weishaar~Real Estate Broker at Broker's 12 in Minot: Attachment 1.

14:50

Rep Adams: It sounds to me that he's paying himself, but the extra money that he makes, he doesn't have to pay the self-employment tax because he's incorporated?

DeLynn Weishaar: We're talking about the organization part. It's a means for us to operate & do business listing & selling properties. The tax is related to self-employment tax & the ability to structure our income as it flows through that corporation in the form of earned income, salary & dividends we receive.

Rep Louser: We would refer to the broker. You would bring in the commission check in. You receive your commission payable to your corporation & it goes into your account. You are paying yourself a salary every month.

A broker is doing the same thing & at the end of the year, what's left in the account after expenses is called dividends. The broker has their dividends & the sales person has theirs within the corporate structure. Neither those dividends are subject to the self-employment tax. What we missed is the non-boss broker being able to incorporate.

Rep M Nelson: What if this organization we're licensing, what would we call it?

DeLynn Weishaar: An entity that is set up, that the provisions of the statute, really lays out the rules related to that organization. The key is that it's not designed to do business with the public. It's strictly a financial organization & that's where the sales associate is allowed to have an organization because it eliminated the need for a designated broker responsible for that company.

Rep M Nelson: You are saying that the brokerage is another corporation off over there someplace?

DeLynn Weishaar: It can be. It could be a real estate firm.

Rep M Nelson: I'm concerned that the organization can't be portrayed as a real estate brokerage firm. Everyone has to get licensed to get paid.

DeLynn Weishaar: There can only be designated broker, that takes responsibility for all the licensees, sales associate & associate broker who are not designated as the principle broker. There can only be one designated broker or a licensed company.

Rep M Nelson: Is the brokerage also licensed under something else?

DeLynn Weishaar: Yes.

Rep Richter: You are the same thing as a group of architects. The person in charge is subject to the self-unemployment tax?

DeLynn Weishaar: An architectural firm has a different license. The individuals take responsibility for a real estate firm. The real estate firm has to be licensed & also identify a designated broker for that real estate firm license. That individual broker takes responsibility for all the licenses that are associated with that firm & essence, under the supervision of that broker.

What we are running into now is an interpretation issue.

Rep Kasper: The firm is the top, the designated is under the firm & broker at the bottom. All three could be incorporated if they wanted, none, or some.

DeLynn Weishaar: That exactly right.

Jeanne Prom~Executive Director of ND Real Estate Commission: Attachment 2.

Chairman Keiser: Anyone else here to testify in support, opposition, neutral? Closes the hearing. What are the wishes of the committee?

Vice Chairman Lefor: Moves a Do Pass.

Rep Schauer: Second.

Roll call was taken for a Do Pass on HB 1250 with 14 yes, 0 no, 0 absent & Rep Richter is the carrier.

Date: Jan 16, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1250

House _____ Industry, Business and Labor _____ 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 Rep Lefor Seconded By Rep Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	x	
Vice Chairman Lefor	x		Rep Richter	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Schauer	x	
Rep Kasper	x		Rep Adams	x	
Rep Laning	x		Rep P Anderson	x	
Rep Louser	x		Rep M Nelson	x	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Richter

REPORT OF STANDING COMMITTEE

HB 1250: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1250 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1250

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1250
3/5/2019
Job #33170

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to licensure of organization of a real estate salesperson, broker, or broker associate

Minutes:

Chairman Klein: Opened the hearing on HB 1250. All members were present.

Representative Louser, District 6: I feel responsible for this bill. Took to an accountant. The understanding back then was the firm would be an incorporating company. The sales person, they were not able to receive a commission. In 2005, the law changed and there were no questions. The salesperson could go out and incorporate. We missed a subset of people called associate brokers. So in 2007 we added the associate brokers. The next step up license but don't have their own firm. We thought everyone was covered. The auditors four years ago came through and started auditing, and told us the way your company is formed, you can't elect a person to serve as president if that person is incorporated as an associate broker or a broker that has ownership in the firm. My contention was that shouldn't matter. I conceded and introduced this bill to clear up any confusion, and allow the broker, the person that is a broker that isn't the owner of the firm to also incorporate. Essentially I'm doing this for a constituent of mine who is also my competitor. There are a couple firms in Bismarck that are structured this way and would benefit from this. There is no downside to this, the downside is in the house it took a long time to explain.

Senator Roers: Why do you want to incorporate why not use an LLC? Are you using the word incorporate loosely, or do you mean create a corporation?

Representative Louser: Create an entity.

Senator Roers: Why would they want to do that thought?

Representative Louser: Mathematically, they would be saving themselves in taxes. They do pay into WSI and unemployment when they incorporate, so there are fees that are paid to the state. The state comes out better and the federal government doesn't gain that. it makes great sense for high income earners.

Senator Roers: S. corp makes sense, will make them act just like an LLC with the protections of the LLC.

Senator Kreun: Does this affect an attorney or someone else who has a lot of sales and transactions?

Representative Louser: Attorney's do not need to hold a real estate license to sell real estate, their attorney license would allow. This wouldn't affect attorneys unless they wanted to have a real estate brokerage license. Under those scenarios they would either be the owner of the company where this does not apply or they would be a broker under a company where there are multiple owner and then that may apply. they wouldn't have to have a broker's license so this wouldn't apply. This fix is only for companies that have multiple owners within the firm's ownership and most instances real estate firms are owned by an individual. This fixes the issue for multiple ownership in a firm.

Chairman Klein: A narrow group that we've found is outside of what we believe was a proper formation, and now we're making sure the law includes them?

Representative Louser: That's correct. It was the intention all along that they be included, and through audits and discussions between the brokers and the real estate auditors, it was determined that the best fix was just to add the term broker so that everybody is covered.

Chairman Klein: Closed the hearing on HB 1250.

Senator Kreun: Moved a Do Pass.

Senator Burckhard: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Burckhard will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1250: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1250 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1250

Jan 16, 2015

AB 1250

Attachment 1
Page 1

I am one of the brokers that will be directly affected by HB1250. I want to take just a few moments to describe how we arrived at where we are today, my situation, and how this issue has affected my business.

Several years before the inception of the Real Estate Organization I had created a corporation through which I run my business. This corporation has provided a means to control how income flows through me and how it is taxed. Prior to the existence of the Real Estate Organization, a corporation set up for this purpose had to be structured as a real estate firm and required a broker to be designated as its principle broker. Because of this requirement, sales associates were unable to structure their business in this fashion. Therefore, the Real Estate Organization was introduced and came into being. The initial bill that was added to the Century Code referenced sales associates specifically, however, in a later legislative session the statute was modified to its current form which now includes broker associates.

There are two types of real estate licenses that are issued to individuals. One is a Broker license which allows that individual to operate independently and the other is a Sales Associate license which requires that individual to work under the supervision of a Broker. The license that is issued to a designated Broker looks exactly the same as the license issued to an associate broker. The difference is in whether or not their license is identified by the Real Estate Commission as the principle broker for a real estate firm. Because both a principle and an associate broker hold the same license, it was assumed under the revised statute that both brokers and associate brokers had the ability to operate their business as a Real Estate Organization. This assumption has come into question due to the current statute's specific reference to sales associate and broker associate and this is what has brought us here today.

I am one of several owners of Brokers 12 Inc. in Minot. Our firm is unique in that our partners, who are all brokers, take turns filling the role of company president and designated broker. All of us continue to be active in the business of listing and selling real estate, of whom several operate their individual businesses as corporations that are licensed as Real Estate Organizations. Brokers 12 Inc. was directly impacted when our acting President and designated broker received notice from the that Real Estate Commission stating that Brokers 12 Inc. could no longer pay brokerage fees to her Real Estate Organization. This was due to her

Jan 16, 2015

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Attachment 1
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license being identified as the designated or principle broker for Brokers 12 Inc.. as opposed to her previous status of associate broker.

A couple of things that I would like to highlight is that:

1) The intent of the statute regarding Real Estate Organizations was to be inclusive of both brokers and sales associates and not exclusive.

and

2) Both a Principle Broker and Broker Associate hold the same license.

Although the addition of the word broker to our current statute seems minor, it will ensure that the provisions of a Real Estate Organization will be available to all real estate licensees.

Questions and clarifications, if needed.



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HB 1250

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Testimony in support of House Bill 1250 – license broker organization

House Industry, Business and Labor Committee
Representative George Keiser, Chair
2 p.m., January 16, 2019

Good afternoon, Mr. Chairman and members of the House Industry, Business and Labor Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission.

The N.D. Real Estate Commission:

- **urges a Do Pass on House Bill 1250 as written.**
- is the regulatory commission that licenses and disciplines real estate practitioners in North Dakota in order to protect the public.
- reviews and licenses organizations for licensed associate brokers and salespeople.
- will be ready to implement this change when it becomes effective.

Thank you for your thoughtful consideration of this important change. I am available for your questions and comments.

Members of the North Dakota Real Estate Commission are: Roger Cymbaluk, Chair; Scott Breidenbach, Vice Chair; members: Sandra Meyer, Steven Bitz, Diane Louser. Staff: Jeanne Prom, executive director.