2019 HOUSE JUDICIARY COMMITTEE

HB 1271

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1271
1/16/2019
30895

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to statements of full consideration being filed with the county recorder and transfer on death deed requirements.

Minutes: 1,2

Chairman K. Koppelman: Opened the hearing on HB 1271.

Rep. Klemin: (Attachment #1) Went over testimony. (:37-6:46)

Rep. McWilliams: A transfer of death deed; how does that affect the five year look back from social security?

Rep. Klemin: Doesn't affect it at all. There is no transfer until the death of the transferor.

Valeska Hermanson, Vogel Law Firm: (Attachment #2) (8:00-12:48)

Rep. Paur: On reverse mortgages; what instrument do they use?

Valeska Hermanson: I am not very familiar with reverse mortgage. They have more of a contract for deed type of thing.

Chairman K. Koppelman: These are normally come about when someone decides they want to transfer property after death so they a TOD deed. When do they do that deed?

Valeska Hermanson: I have never seen TOD question come up in any type of sale. It has always been in estate planning. Discussion on this TOD deed. I do not believe you would ever see it in a sale because there is too much that is there. The person still owns the property.

Chairman K. Koppelman: Supposed a married couple buys a piece of property and they want it only in one name at the time of the purchase; then he will own it at her death.

Valeska Hermanson: I have done it. Where one is going to be the owner of the farmland or the house but they want to make sure the other is taken care of.

Chairman K. Koppelman: So deciding to do that at the time of purchasing something has no different ramifications than changing the ownership of a piece of property to this type of deed after you have owned it for ten years?

Valeska Hermanson: It is different than giving someone an actual ownership because the ownership doesn't exist until the death.

Debbie Kroshus, Burleigh County Recorder: I am in support of this bill. I have a TOD on my house. This clears up the confusion we have had on the TOD deed and how it works. They still have to record a certified copy of my death certificate for that property for it to be able to transfer. Then they can sell it without going through probate.

Opposition: None

Hearing closed

Do Pass Motion Made by Rep. Roers Jones; Seconded by Vice Chairman Karls

Discussion:

None

Roll Call Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Roers Jones

Closed.

Date: 1/16/2019
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1271

House **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 Rep. Roers Jones Seconded By Vice Chairman Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1271: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1271 was placed on the Eleventh order on the calendar.

2019 SENATE POLITICAL SUBDIVISIONS

HB 1271

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB1271
3/14/2019
Job # 33716

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to statements of full consideration being filed with the county recorder and transfer on death deed requirements.

Minutes:

Written attachment #1 Speaker Klemin
Written attachment #2 Janel Frank
Written attachment #3 Valeska Hermanson pgs.1-7

Chairman Burckhard opened the hearing on HB1471. All senators are present.

Representative Laurence Klemin, District 47, introduced and testify in support of HB1271 relating to transfer on death deeds. (:41-10:21) **Written attachment #1**.

Senator Diane Larson: Representative Klemin, you are so brilliant, but I don't run in that same level. Can you explain again what is a transferor? You keep saying that and I am trying to figure out who is this guy in the process?

Representative Klemin: Transferor is the person who makes out the deed and owns the property and who is intending to transfer it to somebody else when he dies.

Chairman Burckhard: So it could be a parent, who owns the house and that's the transferor, and.

Senator Diane Larson: So this is the person whose will it is and I am going to transfer my house to my daughter when I die, so I am a transferor?

Senator J. Lee: The **or** is the owner and **ee** is the recipient.

Representative Klemin: Transforer is the term used in the act; so I suppose we could've said what mean is the guy who is going to die. I couldn't do that. **Senator J. Lee**: Then what about the woman who is going to die? **Rep. Klemin**: I don't know they could've said that too.

Representative Klemin: So, this is not in the person's will. This is instead of being in the will. Because a will is going to go through probate but this isn't. A transferor can also revoke the transfer by recording a revocation instrument with the county recorder. There is no

requirement that a beneficiary even know anything about the transfer on death deed. In the 2015 session the Legislature enacted HB 1169 relating to exemptions from certain recording requirements for deeds. Section 11.18-02.2 provides 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. The reason all that is done is so that the tax assessors know what is being paid for the property when it is being transferred. So that is the consideration.

Chairman Burckhard: So if the transferor say in his deed gives it to his younger daughter, it is recorded as giving it to his daughter at the value of the home or no?

Representative Klemin: Consideration is not mentioned at all in this deed because there isn't any. He is giving it away and whatever the value of that home may be at the time the person dies, is what it is. That may be many years before somebody dies, and values can change.

Representative Klemin: Continued with his testimony on HB 1271. This issue was brought to me by Valeska Hermanson practicing law in Fargo/Moorhead. She was at the House hearing on this bill, but she is not able to be here today to testify. So her colleague from Bismarck, Janel Frank is here to further explain a transfer on death deed and the recording requiring requirements. She works with Transfer on Death Deeds and can tell you more about how this actually works.

Chairman Burckhard: On the second page of your testimony, the fourth line down, it says, transfer on death deed has no consideration, should that say no financial consideration or I mean what kind of consideration are we talking about? Should it say financial?

Representative Klemin: It is not necessary to say financial because consideration is the legal term for money. It could be something else to, but usual money.

Senator Diane Larson: I wish it would just say what everybody understands the words to mean.

Senator Dotzenrod: Is this the same as a quick claim deed?

Representative Klemin: It is not. A quick claim deed takes effect immediately when it is executed and delivered. Even if it is not recorded it is effective and what a quick claim deed does is it says the grantor not the transferor, the grantor is the one in this case, to the grantee the person receiving the property, described in the deed, I am giving you all the interest I have in this particular property whatever it is, even if I don't have any interest it might turn out to be later that I don't have; that's a quick claim deed. There's no warranty of title or anything like in a warranty deed the grantee says, I am transferring this property to you and I warranting title to it. I have good title to transfer to you.

Senator Dotzenrod: Does the term quick claim, is that imply that the person who is doing the transferring the person who owns the property is saying I am giving up or sacrificing or quitting any claim that I may have to this property by signing this document. I am quitting my

claims and that is with quick claims. I've never quite understood exactly why they use that term, quick claim. I thought it may have had something to do with rejecting other claims that other creditors may have on the property which I don't suppose that is possible that you could do that as an individual. If you could sacrifice and give up your own claim to the property, I suppose that is what quick claim comes from.

Representative Klemin: I am not entirely certain of the historical significance of it, but it could very well be what you said. A quick claim deed is frequently used to clear up title questions, to make sure that if there is some kind, when a title examiner looks at the title to the property and they see someone in the chain of title, who maybe shouldn't be there, or there is some question about the way that person is in that chain of title, but is no longer really holding title to that property. A quick claim deed can be used to quit his claim to whatever interest there might be if he had one.

Senator Dotzenrod: This term that we're using here, this transfer on death, TOD, is that an old law that has been around a long time? It is not new, we're just trying to clear up how it fits and the way that its labeled.

Representative Klemin: It's new in North Dakota since 2011. I don't know right now when the uniform act was put together by the Uniform Law Commission but it's all things considered, pretty recent.

Chairman Burckhard: Sometimes the legal language is complicated to the lay man.

Senator Anderson: Sometimes we take the opportunity to learn as much as we can here, even though it's not pertinent to the bill.

Representative Klemin: I am flattered by some of the compliments I get sometimes in this committee.

Janel C. Frank, Attorney with Vogel Law Office. Written attachment #2. I am testifying in support of HB1271 (16:08-22:39).

Valeska Hermanson, Attorney with Vogel Law Office in Fargo, ND. She was unable to attend the hearing by has submitted her (Written attachment #3 (Pgs 1-7).

Senator Diane Larson: So this transfer on death deed, is this something that like for example, my husband and I both are on the title of the house. Can this be something that when both die it transfers or does it have to be just the one person to another person or individual?

Ms. Janel Frank: You would have to both execute a transfer on death in order to share because essentially if you have a joint tendency with rites of survivorship you each have the right to be able to receive the property when the other person passes away. There would be no way to know who the survivor would be, so you would have to both execute a transfer on death deed in order to be able to utilize that.

Senator Diane Larson: So, an individual who is married, they would both have to sign this to the intended recipient or it wouldn't go into effect when the first one dies. It would go into effect until the 2nd one dies. Is that right? You can actually have two of them on the same property?

Ms. Janel Frank: Well the ownership of joint tendency and rights of survivorship is there and I think that would take precedence over the right of the transfer on death deed to step up and sort of bump that off. So, I would have to check to be sure but my understanding of that would be that joint tendency would take place and then after the death of the surviving spouse then the transfer on death deed would be moved to the beneficiary and the deed would then become in effect.

Senator Anderson: You're not concerned that by removing it from the list of the exemptions recorders will then think oh now its' removed from the list of exemptions so we have to get it again.

Ms. Janel Frank: I have thought about that as being a possibility because if your looking at it, it clearly states what you're looking for. In this particular deed does this particular deed require a statement of full consideration. You're checking down the list of exemptions and you see it then you say, great, that what I don't have to think about it anymore. So it does require one more step of thinking through the process of well, you know is it the auditors certificate and whether or not the statement of full consideration in there is related to that, so I think that's a fair question to ask, and I don't know whether that is the case or not.

Senator Anderson: Is there another place where it says that the transfer on death deed doesn't require this, and we're just not seeing it, as it is not part of this bill?

Ms. Janel Frank: Is there another place where it says it doesn't require a statement of full consideration, not that I am aware of.

Senator Anderson: I am wondering how the recorders is going to respond to that now? I don't know if we have any recorders here. We have somebody who might know what they think.

Senator Judy Lee: That thought was flowing through my head that Senator Anderson had mentioned and perhaps we might want to visit about including a statement that says if it does not include the transfer on death deed just to make it perfectly clear. Having a statement in the statute that says it does not require to transfer deed somewhere? I will leave it up to Speaker Klemin and you to figure out if there is a really good spot for it. Boy we wouldn't have any question then anymore, would we? At least until next session.

Ms. Janel Frank: I think I can kind of considerate it in the context of the personal representatives deed which is also not listed in the statement of full consideration. There is no listing and it's not included as an exempt document in the statement of full consideration and yet, the recorders' office is understanding that there is no statement of full consideration required. So as long as they understand in the context that a similar in nature to a transfer of death deed a personal representative deed neither one of them being a required statement

of full consideration. Neither one is listed, but both of them exempt from an auditor's certificate. I think that is probably what helps get them over that hurdle.

Senator Judy Lee: To follow up on that, in this section of requirements at the end of the bill, I am just asking, not telling, I am on the requirements and we've added in #3 about using the TOD on the title of the deed. Would it be appropriate to consider just adding either under sub 3 or adding an additional line that indicates that they auditor's certificate then as a statement of full consideration is not required for a TOD?

Ms. Janel Frank: Anything that you can provide clarification is always going to be helpful. If it is there in black and white, it will make it easier. I think that's confusing in the current situation is the fact that it exists in those two separate sections, so it sort of looks like it does and then it doesn't. People will make their interpretations based upon their past experience in history. I think that would be helpful, yes.

Senator Dotzenrod: What the bill does on line 21 and 22, it crosses off this term of a transfer of death deed. So it crosses that off; then on line 7, it starts out with Number 6, this section does not apply to deeds transferring title to the following types of property or order deeds relating to the following transactions. So, evidently there's without knowing what the requirements or the imposition of requirements are, that are in subsection 6, I am not exactly sure what it is we're exempting this TOD, transfer on death from. I've heard terms here in the hearing so far about the certificate of consideration, the requirement to be recorded or not be recorded, auditor's certificate. The things that we're taking, the requirements that exist in law that we're now crossing this off from, they must be imposed in this section and are we, is that a complete list of everything that we are now taking the transfer of death deed out of being required by law? That is there is no requirement now, because we've crossed this off, that there be a certificate of consideration or auditor's certificate or that this document be recorded. Are those the things that we are doing in this bill? We are taking those requirements away?

Ms. Janel Frank: I think it may be help if you look at page 3 of Valeska Hermanson's testimony. She lists out the statutes and the language of the particular statute that are involved, so it helps provide some background as far as what you're looking at. So the section that you are referring to about line number 6 on page 3, 11-18.2.2-6 the section does not apply deeds transferring title to that, as that is the same section that's recreated in the bill. Then if you look above that, it says statement of full consideration to be filed with the recorder and it talks about.

Chairman Burckhard: So let's clarify what you just talked to him about. What did you show him where it is at?

Ms. Janel Frank: HB 1271 if you look at the amendment section, it starts off on line 7 and it has a number 6, and then it goes on to list a-l, certain documents. So he was confused from my understanding as far as well it doesn't really tell us what it's referring to, it just says it's going to remove that but he didn't really know how was he was supposed to know that where he's moving it from. Right, so I referred him to my testimony along with Ms. Valeska Hermanson's testimony is attached and then if you go to page 3 of her testimony, you will find the statute language itself set out. In the middle there it says 11-18-2.2.6 that you see

on the side of the starting language for HB1271. So if you go above that, then you can see what that particular exclusion relates to which is the requirement for statement of full consideration.

Senator Anderson: I know what you're trying to eliminate confusion by this bill. But if you look at page 3, that you referred to where it lists the law, if your logic is to be consistent we should also remove number 7, on the next section because you don't require that either. So it seems to me if you want to solve the problem that you're trying to solve, there should be another section either 4 or 5 and move 4 down insert it in 32.1-32.1-06 that says specifically what a transfer on death says. It does not require an auditor's certificate. I would think that that would remove the uncertainty. But just by removing this section without it being specific someplace else, where it doesn't require that, I can understand the previous that the 2015 tried to fix, because then the recorder thing does require it, because there is no specific exemption for it. So I would think that inserting that language here on the second page, would solve the problem. But I don't think that you've solved the problem by eliminating this section, because now the recorder looks at that and says oh, they eliminated the exemptions so now it requires it again.

Ms. Janel Frank: I think there is a difference between number 7 and into 11-18-03. The reason is because that we only know that certain documents do not require an auditor's certificate because they are listed in 11-18-03. In fact, if we you look at 11-18-02 it says a knowledge of certificate is required among the providers listed in 11-18-03. So only if they are listed down here, even though they are not requiring an auditor's certificate. So we have to have that section. We can't get rid of that. But I mean it would suddenly be able to clarify that, so that certain documents that are don't require. I think that the clearest thing we would have to look at is seeing, if it doesn't require an auditor's certificate, then we are in a situation where it would require statement of full consideration. So, if you look at the document that are exempt from the requiring an auditor's statement is the only situation where any of those documents would require a statement of full consideration. If not, you can fix it by saying under 11-18-03 you know these documents require and you also do not require a statement of consideration. That I think would be probably the easiest way to make it clear that that is the case.

Chairman Burckhard: So are we really clarifying. The longer we talk about this the more confused I am. But I mean I know in legal speak maybe but I am. Do you suggest we clarifying what we need to clarify in this bill?

Senator Anderson: Maybe what we should do then, is to ask you to take another look at that and see if putting it on the second page would be the solution that would solve your problem. Put that into a specific exemption for those two items on the second page.

Ms. Janel Frank: I am here testifying here in favor of it, you would want me to. I can if you certainly be willing to do that.

Senator Anderson: What we are trying to do here is to solve the problem that you want to solve. This bill is a vehicle for that. What I am saying is I don't think you're solving it by the change that you've made on page 1. Now we can also take that out on page 1, but a clearer statement of what is not required on page 2, you see would clear it up between 2011 and

2015 because obviously at that time there was a problem and that's why this was inserted. Now you've just gone back to that period of time, and that is all you've done here, and there is still going to be that uncertainty.

Ms. Janel Frank: I think it did originally, for Ms. Valeska Hermanson. She was having a lot of concerns of seeing that confusion in the recorders offices.

Senator J. Lee: I support where Senator Anderson is going cause that's where I was going, a while ago and I didn't relate it very well. Buy I also understand why somebody who was coming to testify doesn't necessarily to rewrite out stuff. Perhaps we might suggest that Speaker Klemin and our intern might chat together about whether there is an opportunity to clarify.

Chairman Burckhard: If we are trying to clarify it. **Senator J. Lee**: Exactly.

Representative Klemin: I just wanted to mention certainly if this bill isn't clarifying what we intended to do, we can take another crack at it. But I would like to say that the reason for Section 2 of this bill putting a transfer on death deeds language on top of the bill, is so that recorder will know that it is a transfer on death deed. A recorder cannot intentionally remain ignorant of the other provisions in the law, such as a Transfer on Death Deed Act which says, in it that there is no consideration.

Senator Anderson: It might be that we're not seeing the transfer on death deed act, and that's what I mentioned before, but is there another section of the law which says that this is not required, then we've got that solution there. But, obviously there was confusion between 2011 and 2015 and it seems like what we've done here is to just go back to that previous confusion because we're trying to eliminate current confusion.

Representative Klemin: That is partially correct, but what we thought we were doing by putting the second amendment in to this statute is because we are amending the Transfer of Death Deed Act, also which is not the recording act to say that they have to put the title on the deed so that the recorder will know what it is.

Senator J. Lee: Would there be any harm in adding a line in that second page that indicates that the auditors certificate is not required?

Representative Klemin: I don't see why we couldn't do that. I would be happy to take another look at that.

Senator J. Lee: I think that is kind of where we're going with this whole thing. I understand exactly what your both saying. I get it. But the idea that it would be in a place where somebody is not going to miss it, that it is pretty clear if it isn't going to mess up something someplace else, I think that is where both Senator Anderson and I are headed. So if we might just add a sentence that we could easily, fix the problem here. Then that would be away to just clarify exactly that that specific auditor's certificate would not be required.

Representative Klemin: I think I am in agreement with that. I don't want to be back here in the next session trying to clarify this same bill again.

Chairman Burckhard asked for further testimony in favor of HB1271. He then asked for opposition testimony, any neutral testimony. No one came forward.

Senator Dotzenrod: I want to make sure that I am clear on one point that everybody else here probably has figured out and I am just a little slow. But is this document that, the subject that we're the Transfer on Death Deed is current law required that to be recorded?

Representative Klemin: Yes, he replied.

Senator Dotzenrod: Okay that's it.

Senator Anderson, Senator Kannianen has on his I-pad the law that we just referred to here and he could read it to you and you can see what it says.

Senator Kannianen: Chapter 30.1 which of course is what. Page 2 would add that line, or the subsection 3, but it is subsection 7 in that title just says that it is effective without consideration. The Transfer on Death Deed is effective without notice or delivery to, or acceptance by the designated beneficiary during the transferor life, or without consideration.

Senator Anderson: That doesn't say they mean an auditor certificate you see. So by putting again this bill that would clear that up I think. It says without consideration but apparently that didn't solve the problem before. I think if Representative Klemin and the other attorney take a look at that they maybe could come up with some language that would clear it up a little better.

Chairman Burckhard: Closed the hearing on HB1271.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1271
3/15/2019
Job # 33808

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to statements of full consideration being filed with the county recorder and tranafer on death deed requirements.

Minutes: Written attachment #1: Rep. Klemin

Chairman Burckhard called the committee for discussion on HB1271. All senators are present.

Senator Anderson: I saw Nick Hacker out in the hall and he was in here earlier but he's not here now. They were going to come back with something that would fix this on the second page so that there wouldn't be any problems going forward. We haven't heard from them yet.

Alex: He came and brought copies for the committee.

Chairman Burckhard: We've been given an amendment from Alex, our legal intern regarding this bill. It says Section 2, add a new subsection 5, to section 30.1. So we are adding number 5, an auditors certificate of transfer under Section 11-18-02. A statement of full consideration under section 11-18-18.02.2 are not required to record or transfer on death deed or a revocation instrument.

Senator Anderson: This makes it about as much sense to me as I had before, but I will **move the amendment** anyway.

Chairman Burckhard: We've got a motion to move the amendment submitted by Representative Klemin, with amendment number **19.0938.01001**.

Moved and 2nd Sen. Diane Larson

Chairman Burckhard asked for committee discussion.

Senator Dotzenrod: I am trying to recall what happened here. As I remember we asked Representative Klemin about should we add this. His response was well, anyone who's anyone in the system and is familiar with this title of transfer of death deed knows that this is

what the law says. I thought our answer to him on that was well that might be true but if we put this in here and sort of repeat it, what the people in the business already understand, but we repeat it here, then it is less likely to get skipped over or messed and it makes it clearer to a person whose is trying to do one of these transfers. I think that's what how we got here. I think he was assuming we wouldn't need to do this, to have it. But I think we thought as a committee that if this is the case, we should repeat it here and make sure it is clear.

Chairman Burckhard: Well he is very intelligent person, and very good lawyer, I mean he reads through this stuff like we all just know it. I was kind of amazed and confused by that.

Senator J. Lee: This is a belt and suspenders deal. Exactly what Senator Dotzenrod said. It is already someplace else. But nobody can miss it this way because it's in both places.

Chairman Burckhard: call the committee to vote on HB1271.
Roll call vote: **6-0-0 on the motion on the amendment passes.**

Chairman Burckhard then asked for the next motion.
Senator Anderson: moved a do pass as amended
Senator Judy Lee: seconded that motion
Roll call vote: 6-0-0
Carrier: Senator Burckhard

SK
3/15
18

19.0938.01001
Title.02000

Adopted by the Senate Political Subdivisions Committee
March 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1271

Page 2, after line 9, insert:

"5. An auditor's certificate of transfer under section 11-18-02 and a statement of full consideration under section 11-18-02.2 are not required to record a transfer on death deed or a revocation instrument."

Renumber accordingly

Date: 3.15.2019
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1271

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: Amendment from Rep. Klemin 19.0938.01001

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. Anderson Seconded By Sen. Diane Larson

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3.15.2019
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1271

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. H. Anderson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Burkhard

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

REPORT OF STANDING COMMITTEE

HB 1271: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1271 was placed on the Sixth order on the calendar.

Page 2, after line 9, insert:

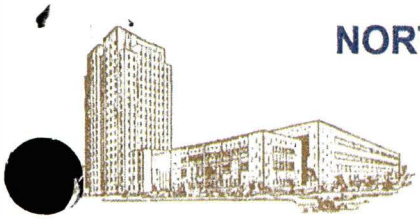
"5. An auditor's certificate of transfer under section 11-18-02 and a statement of full consideration under section 11-18-02.2 are not required to record a transfer on death deed or a revocation instrument."

Renumber accordingly

2019 TESTIMONY

HB 1271

#1
1271
1-16-19
871



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Lawrence R. Klemin
District 47
3929 Valley Drive
Bismarck, ND 58503-1729
R: 701-222-2577
lklemin@nd.gov

Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
HOUSE BILL NO. 1271
JANUARY 16, 2019

Mr. Chairman and Members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill No. 1271, relating to transfer on death deeds.

Transfer on death deeds were authorized by the Legislature in 2011 in Chapter 30.1-32.1 of the North Dakota Century Code, which is the Uniform Real Property Transfer on Death Act. 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. There is no consideration or purchase price amount shown on this type of deed because there is none. 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.

In the 2015 Session, the Legislature enacted House Bill No. 1169, relating to exemptions from certain recording requirements for deeds. 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. However, there are exemptions from the consideration requirement in certain cases. The exemptions are listed in Section 11-18-02.2(6). HB 1169 (2015) added a transfer on death deed to the list of exemptions because consideration is not required for a transfer on death deed. HB 1169 (2015) also amended Section 11-18-03, relating to those instruments that may be recorded without regard to the payment of taxes to include a transfer on death deed because the transferor retains possession of the real property and there is no actual transfer of title to a beneficiary.

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HB 1169 (2015) has resulted in some confusion about whether the consideration exemption for a transfer on death deed needs to be certified on the face of the deed. Section 1 of HB 1271 clarifies this issue by removing the exemption provision from the recording statute because it is not needed. A transfer on death deed has no consideration and therefore should be recordable without including reference to an exemption on the deed. Placing a certification on the TOD deed to say that it is what it says it is appears to be an unnecessary step.

Section 2 of HB 1271 specifies that a transfer on death deed must have the words "transfer on death deed" or "TOD" in the title of the deed so that the County Recorder will know immediately that it is a transfer on death deed.

In short, HB 1169 (2015) created a confusion in the recording requirement for a transfer on death deed and HB 1271 (2019) removes the confusion.

This issue was brought to me by Valeska Hermanson, an attorney practicing law in Fargo-Moorhead, who is here today to testify before the committee on this matter. She can further explain the issue with regards to the recording requirements.

I urge your support for HB 1271. Thank you.

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Valeska A. Hermanson
vhermanson@vogellaw.com

Testimony of Valeska A. Hermanson
January 16, 2019
House Bill 1271
House Judiciary Committee

Mr. Chairman and Members of the Judiciary Committee:

Thank you for allowing me to testify today with respect to House Bill 1271. My name is Valeska Hermanson and I live in Moorhead. I am an attorney with the Vogel Law Firm, practicing in estate planning, trust and probate law, including real property transactions. I began practicing law in North Dakota shortly after my graduation from UND School of Law in 1999. Prior to working with Vogel, I practiced with the McKennett Law Firm in Williston. Throughout my practice, I have done many, many deeds transferring title to real property.

In the 2015 session, the legislature revised the rules for reporting the full consideration for a transfer of real property, including the exemptions for the reporting. In practice, the new law results in an inconsistency with respect to whether a statement of full consideration is required on the Transfer on Death Deeds. I've set out the current statutes on a separate page, with the relevant issue in bold. One statute, §11-18-02.2(6)(l), requires a statement of full consideration noting that the deed is exempt in order to obtain the auditor's certificate under §11-18-02. The next statute, §11-18-03(7), doesn't require an auditor's certificate and as a result the deed can be recorded without the statement of consideration. As a result, some counties are requiring the statement of full consideration and an auditor's certificate and some aren't requiring either, and it's unclear which is correct.

After discovering this issue, I contacted the supporters of the original bill, including Speaker Klemin, and asked that they propose legislation to clarify the law. We are here today to consider that change, as introduced by Speaker Klemin, Representative Roers Jones and Senator Dwyer in House Bill 1271. In my opinion, the Transfer on Death Deed is most similar to a Personal Representative's Deed or document terminating ownership at death and therefore should only be listed under §11-18-03(7), and should be removed from §11-18-02.2(6)(l).

I've included the Cass County Recorder's instructions for the Full Consideration Statement required under §11-18-02.2. I have also included instructions from the Cass County Recorder for recording deeds. You'll note that the "Additional Requirements" for recording a deed state that property taxes are not required to be paid before recording a Transfer on Death Deed (highlighted). Since the Grantor remains in full fee ownership of the property until their death, including rights to sell or otherwise transfer the property, no transfer of ownership takes place which would give rise

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to an auditor's review of the taxes and assessments as required under §11-18-02. For the same reasons, it's extremely unlikely that anyone would ever purchase property via a Transfer on Death Deed. No money changes hands and no transfer takes place at the time of execution or recording. Therefore, the statement of full consideration on a Transfer on Death Deed has no purpose for the auditor, the recorder or the state.

HB 1271 addresses the confusion arising from including Transfer on Death Deeds under two opposing statutes, by removing the requirement to include a statement of consideration on the deed. The Transfer on Death Deed will continue to comply with §30.1-32-.1-06(1), being properly recordable under §11-18-03 in the same manner as other inter vivos deeds in that section, specifically subsections (2) and (4).

In conclusion, I urge your support for House Bill 1271. Thank you for your time and consideration of this matter.

Respectfully submitted,

Valeska A. Hermanson

Example of a Statement of Full Consideration for a Transfer on Death Deed under NDCC §11-18-02.2(6)(l), which is placed at the bottom of the Deed:

I certify that the full consideration paid for the Property described in this deed is exempted from filing requirement by NDCC §11-18-02.2(6)(l).
Date:_____ _____
Grantee or Agent

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NCCC §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…unless there is entered thereon a certificate of the county auditor…[showing that taxes and assessments have been paid].

NDCC §11-18-02.2. Statements of full consideration to be filed with 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 one of the following:
   a. A statement of the full consideration paid for the property conveyed.
   b. A statement designating one of the exemptions in subsection 6 which the grantee believes applies to the transaction.

***

6. 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 forced sales, mortgage foreclosures, and tax sales.
   f. All sales to or from religious, charitable, or nonprofit organizations.
   g. All sales when there is an indicated change of use by the new owners.
   h. All transfer of ownership of property for which is given a quitclaim deed.
   i. Sales of property not assessable by law.
   j. Agricultural lands of less than eighty acres [32.37 hectares].
   k. A transfer that is pursuant to a judgment.
   l. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

NDCC §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.
7. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

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Recording Documents

General Recording Requirements

- Every document must be an original or certified copy, no larger than 8 ½" X 14" size
- The printed, written, or typed words must be considered legible
- A font that is equal to or larger than a 10 pitch Calibri font must be used, unless the form was issued by a government agency
- Documents must have a 1-inch margin at either the top, bottom, or side of each page
- A 3" margin across the top of the first page for recording information (see Recording Fees page)
- No shading, color or aerial photo attachments will be accepted
    - Per Attorney General opinion 2017-L-03 , County Recorders will not record any documents that have exhibits or attachments containing a map, survey or drawing, unless it includes the signature and seal of a registered professional land surveyor
- All dates must be filled in
- Social Security Numbers must be redacted before recorded
- Adequate county legal description that is not abbreviated
- All signatures must be original handwritten
- All original documents must be notarized unless it is an instrument entitled to record without acknowledgment provided for in NDCC 47-19-02

Deeds – Additional Requirements

- Full Consideration Statements (not required on a Mineral Deed)
- Address of the grantee
- Name and address of drafter of a legal description executed in the State of ND on or after 1/1/2000 that contains a metes and bounds legal description (NDCC 47-19-03.1); in the form of "This legal description was prepared by (name) (address)." Or "The legal description was obtained from a previously recorded instrument."
- All property taxes must be paid in full before a deed can be transferred. (not required on a Mineral Deed, Personal Representatives Deed or a Transfer on Death Deed)

Mortgages – Additional Requirements

- Address of the mortgagee(s)
- Address of the assignee(s) on an assignment of mortgage

Subdivision Plats & Auditor Lot Plats

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- Must be eRecorded
- Size requirement for a Subdivision plat is 22" X 34". An Auditor plat needs to be no larger than 8 ½" X 14"
- No shading or aerial photos will be accepted

Surveys

- Must be no larger than 8 ½" X 14"
- Must have Surveyor's signature/initials over the Surveyor's seal & a full notary acknowledgment

Corner Monument Record (now available on NDRIN)

- Must be no larger than 8 ½" X 14"
- Must have Surveyor's signature/initials over the Surveyor's seal
- Paper should be a good bond stock weighing not less than 16 pounds

Recorder's Duties NDCC 11-18-01

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Full Consideration Statements

Full Consideration Statements

(EXAMPLES ONLY)

(DO NOT RECORD)

EFFECTIVE AUGUST 1, 2017

Only 1 of 2 statements for consideration will be accepted on a deed.

Listed below are the 2 kinds of statements required by North Dakota Century Code 11-18-02.2. Pick the appropriate statement and type it on your deed.

1. I certify that the full consideration paid for the property described in this deed is $_____.

Signed: _____ Date: _____

Grantee or Agent

2. I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision _____ of N.D.C.C. 11-18-02.2 (6)

Signed _____ Date: _____

Grantee or Agent

If you choose number two you will have to pick one of the following and put the letter in the blank.

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 which resulted as a settlement of an estate.

E. All forced sales, mortgage foreclosures, and tax sales.

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F. All sales to or from religious, charitable, or nonprofit organizations.

G. All sales when there is an indicated change of use by the new owners.

H. All transfer of ownership of property for which is given a quitclaim deed.

I. Sales of property not assessable by law.

J. Agricultural lands of less than eighty acres (32.37 hectares).

K. A transfer that is pursuant to a judgment.

L. A transfer on death deed or revocation instrument authorized under chapter 30.1 - 32.1.

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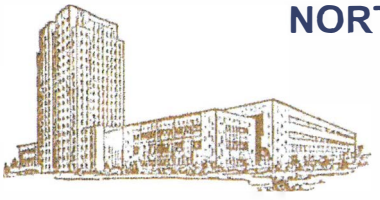
NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Lawrence R. Klemin
District 47
3929 Valley Drive
Bismarck, ND 58503-1729

R: 701-222-2577
lklemin@nd.gov

Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1271
MARCH 14, 2019

Mr. Chairman and Members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill No. 1271, relating to transfer on death deeds.

Transfer on death deeds were authorized by the Legislature in 2011 in Chapter 30.1-32.1 of the North Dakota Century Code, which is the Uniform Real Property Transfer on Death Act. A transfer on death deed is an estate planning device in which an owner of real property can transfer an interest in that real property to one or more beneficiaries named in the deed in advance of the death of the transferor. There is no consideration or purchase price amount shown on this type of deed because there is none. 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 occurs. 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.

In the 2015 Session, the Legislature enacted House Bill No. 1169, relating to exemptions from certain recording requirements for deeds. 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. However, there are exemptions from the consideration requirement in certain cases. The exemptions are listed in Section 11-18-02.2(6). HB 1169 (2015) added a transfer on death deed to the list of exemptions because consideration is not required for a transfer on death deed. HB 1169 (2015) also amended Section 11-18-03, relating to those instruments that may be recorded without regard to the payment of taxes to include a transfer on death deed because the transferor retains possession of the real property and there is no actual transfer of title to a beneficiary.

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HB 1169 (2015) has resulted in some confusion about whether the consideration exemption for a transfer on death deed needs to be certified on the face of the deed. Section 1 of HB 1271 clarifies this issue by removing the exemption provision from the recording statute because it is not needed. A transfer on death deed has no consideration and therefore should be recordable without including reference to an exemption on the deed. Placing a certification on the TOD deed to say that it is what it says it is appears to be an unnecessary step.

Section 2 of HB 1271 specifies that a transfer on death deed must have the words "transfer on death deed" or "TOD" in the title of the deed so that the County Recorder will know immediately that it is a transfer on death deed.

In short, HB 1169 (2015) created a confusion in the recording requirement for a transfer on death deed and HB 1271 (2019) removes the confusion.

This issue was brought to me by Valeska Hermanson, an attorney practicing law in Fargo-Moorhead. Ms. Hermanson is not able to be here today to testify, but her colleague from Bismarck, Janel Frank, is here to further explain a transfer on death deed and the recording requirements.

I urge your support for HB 1271. Thank you.

Rep. Lawrence R. Klemin
Speaker of the House

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Janel C. Frank

jfrank@vogellaw.com

March 14, 2019

Testimony of Janel C. Frank
House Bill 1271
Senate Political Subdivisions Committee

Mr. Chairman and Members of the Committee:

My name is Janel Frank. I am a resident of Bismarck, North Dakota, and an attorney with Vogel Law Firm. I practice in the areas of estate planning, trust and probate law (including related real property transactions), and tax.

I am here to present testimony on behalf of Valeska Hermanson (who is also an attorney with Vogel Law) and myself with respect to House Bill 1271. The written testimony of Valeska Hermanson in regards to House Bill 1271 given before the House Judiciary Committee is attached to mine. This testimony addresses an ambiguity created by references to Transfer on Death deeds in NDCC § 11-18-02.2(6)(l) and NDCC § 11-18-03.

When a decedent dies owning real property, a probate proceeding is required to transfer that real property to the decedent's heirs or devisees. Transfer on Death deeds are primarily used in an estate planning context to remove real property from the decedent's probate estate by converting the real property to non-probate property, potentially eliminating the need for a probate proceeding.

The requirements for recording transfer documents, such as Transfer on Death deeds, are included in Chapter 11-18 of the North Dakota Century Code. According to NDCC § 11-18-02, an auditor's certificate is required before documents that transfer title can be recorded unless an exemption applies. (An auditor's certificate certifies that all taxes and assessments have been paid with respect to property that is subject to the transfer.) Documents that require an auditor's certificate are also required to include a statement of full consideration under NDCC § 11-18-02.2 unless one of a separate set of exemptions applies. Consequently, documents under NDCC § 11-18-02 require an auditor's certificate but may or may not require a statement of full consideration, depending on whether they are listed as exempt from that requirement in NDCC § 11-18-02.2.

As the statutes currently exist, a Transfer on Death deed does not require an auditor's certificate before such deed can be recorded since it is one of the exemptions listed in NDCC § 11-18-03. By exempting Transfer on Death deeds from the need for an auditor's certificate, Transfer on Death deeds should be removed from any additional requirements under NDCC § 11-18-02 (including

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the need for a statement of full consideration). Consequently, listing Transfer on Death deeds in NDCC § 11-18-02.2 in the section of the statutes that requires an auditor's certificate is confusing and makes it appear that an auditor's statement is indeed required. An ambiguity has therefore been created. This ambiguity has resulted in some recorders requiring an auditor's certificate and a statement of full consideration for a Transfer on Death deed and some recorders not requiring either.

Transfer on Death deeds are generally used in an estate planning context for the purpose of finalizing who will receive the transferor's property at death. A Transfer on Death deed is revocable, which means that the transferor can undo it at any time during his or her lifetime as long as the transferor retains legal capacity. A Transfer on Death deed is similar to a Personal Representative's deed in that the transferor receives no consideration for the transfer of the property. Personal Representative's deeds are listed as one of the documents that do not require an auditor's certificate under NDCC § 11-18-03, but are not included in the list of documents exempt from a statement of full consideration under NDCC § 11-18-02.2. We are not aware of any recorders requiring a statement of full consideration for Personal Representative's deeds.

House Bill 1271 removes Transfer on Death deeds from the list of documents exempt from a statement of full consideration under section 11-18-02.2, thereby removing the ambiguity discussed in this testimony. Based on the foregoing, I urge your support for House Bill 1271.

Respectfully submitted;

Janel C. Frank

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Valeska A. Hermanson

vhermanson@vogellaw.com

Testimony of Valeska A. Hermanson
January 16, 2019
House Bill 1271
House Judiciary Committee

Mr. Chairman and Members of the Judiciary Committee:

Thank you for allowing me to testify today with respect to House Bill 1271. My name is Valeska Hermanson and I live in Moorhead. I am an attorney with the Vogel Law Firm, practicing in estate planning, trust and probate law, including real property transactions. I began practicing law in North Dakota shortly after my graduation from UND School of Law in 1999. Prior to working with Vogel, I practiced with the McKennett Law Firm in Williston. Throughout my practice, I have done many, many deeds transferring title to real property.

In the 2015 session, the legislature revised the rules for reporting the full consideration for a transfer of real property, including the exemptions for the reporting. In practice, the new law results in an inconsistency with respect to whether a statement of full consideration is required on the Transfer on Death Deeds. I've set out the current statutes on a separate page, with the relevant issue in bold. One statute, §11-18-02.2(6)(l), requires a statement of full consideration noting that the deed is exempt in order to obtain the auditor's certificate under §11-18-02. The next statute, §11-18-03(7), doesn't require an auditor's certificate and as a result the deed can be recorded without the statement of consideration. As a result, some counties are requiring the statement of full consideration and an auditor's certificate and some aren't requiring either, and it's unclear which is correct.

After discovering this issue, I contacted the supporters of the original bill, including Speaker Klemin, and asked that they propose legislation to clarify the law. We are here today to consider that change, as introduced by Speaker Klemin, Representative Roers Jones and Senator Dwyer in House Bill 1271. In my opinion, the Transfer on Death Deed is most similar to a Personal Representative's Deed or document terminating ownership at death and therefore should only be listed under §11-18-03(7), and should be removed from §11-18-02.2(6)(l).

I've included the Cass County Recorder's instructions for the Full Consideration Statement required under §11-18-02.2. I have also included instructions from the Cass County Recorder for recording deeds. You'll note that the "Additional Requirements" for recording a deed state that property taxes are not required to be paid before recording a Transfer on Death Deed (highlighted). Since the Grantor remains in full fee ownership of the property until their death, including rights to sell or otherwise transfer the property, no transfer of ownership takes place which would give rise

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to an auditor's review of the taxes and assessments as required under §11-18-02. For the same reasons, it's extremely unlikely that anyone would ever purchase property via a Transfer on Death Deed. No money changes hands and no transfer takes place at the time of execution or recording. Therefore, the statement of full consideration on a Transfer on Death Deed has no purpose for the auditor, the recorder or the state.

HB 1271 addresses the confusion arising from including Transfer on Death Deeds under two opposing statutes, by removing the requirement to include a statement of consideration on the deed. The Transfer on Death Deed will continue to comply with §30.1-32-.1-06(1), being properly recordable under §11-18-03 in the same manner as other inter vivos deeds in that section, specifically subsections (2) and (4).

In conclusion, I urge your support for House Bill 1271. Thank you for your time and consideration of this matter.

Respectfully submitted,

Valeska A. Hermanson

Example of a Statement of Full Consideration for a Transfer on Death Deed under NDCC §11-18-02.2(6)(l), which is placed at the bottom of the Deed:

I certify that the full consideration paid for the Property described in this deed is exempted from filing requirement by NDCC §11-18-02.2(6)(l).
Date:_____ _____
Grantee or Agent

NCCC §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…unless there is entered thereon a certificate of the county auditor…[showing that taxes and assessments have been paid].

NDCC §11-18-02.2. Statements of full consideration to be filed with 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 one of the following:
   a. A statement of the full consideration paid for the property conveyed.
   b. A statement designating one of the exemptions in subsection 6 which the grantee believes applies to the transaction.

***

6. 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 forced sales, mortgage foreclosures, and tax sales.
   f. All sales to or from religious, charitable, or nonprofit organizations.
   g. All sales when there is an indicated change of use by the new owners.
   h. All transfer of ownership of property for which is given a quitclaim deed.
   i. Sales of property not assessable by law.
   j. Agricultural lands of less than eighty acres [32.37 hectares].
   k. A transfer that is pursuant to a judgment.
   l. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

NDCC §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.
7. A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.

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Recording Documents

General Recording Requirements

- Every document must be an original or certified copy, no larger than 8 ½" X 14" size
- The printed, written, or typed words must be considered legible
- A font that is equal to or larger than a 10 pitch Calibri font must be used, unless the form was issued by a government agency
- Documents must have a 1-inch margin at either the top, bottom, or side of each page
- A 3" margin across the top of the first page for recording information (see Recording Fees page)
- No shading, color or aerial photo attachments will be accepted
    - Per Attorney General opinion 2017-L-03 , County Recorders will not record any documents that have exhibits or attachments containing a map, survey or drawing, unless it includes the signature and seal of a registered professional land surveyor
- All dates must be filled in
- Social Security Numbers must be redacted before recorded
- Adequate county legal description that is not abbreviated
- All signatures must be original handwritten
- All original documents must be notarized unless it is an instrument entitled to record without acknowledgment provided for in NDCC 47-19-02

Deeds – Additional Requirements

- Full Consideration Statements (not required on a Mineral Deed)
- Address of the grantee
- Name and address of drafter of a legal description executed in the State of ND on or after 1/1/2000 that contains a metes and bounds legal description (NDCC 47-19-03.1); in the form of "This legal description was prepared by (name) (address)." Or "The legal description was obtained from a previously recorded instrument."
- All property taxes must be paid in full before a deed can be transferred. (not required on a Mineral Deed, Personal Representatives Deed or a Transfer on Death Deed)

Mortgages – Additional Requirements

- Address of the mortgagee(s)
- Address of the assignee(s) on an assignment of mortgage

Subdivision Plats & Auditor Lot Plats

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- Must be eRecorded
- Size requirement for a Subdivision plat is 22" X 34". An Auditor plat needs to be no larger than 8 ½" X 14"
- No shading or aerial photos will be accepted

Surveys

- Must be no larger than 8 ½" X 14"
- Must have Surveyor's signature/initials over the Surveyor's seal & a full notary acknowledgment

Corner Monument Record (now available on NDRIN)

- Must be no larger than 8 ½" X 14"
- Must have Surveyor's signature/initials over the Surveyor's seal
- Paper should be a good bond stock weighing not less than 16 pounds

Recorder's Duties NDCC 11-18-01

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Full Consideration Statements

Full Consideration Statements

(EXAMPLES ONLY)

(DO NOT RECORD)

EFFECTIVE AUGUST 1, 2017

Only 1 of 2 statements for consideration will be accepted on a deed.

Listed below are the 2 kinds of statements required by North Dakota Century Code 11-18-02.2. Pick the appropriate statement and type it on your deed.

1. I certify that the full consideration paid for the property described in this deed is $_____.

Signed: _____ Date: _____

Grantee or Agent

[redacted]ertify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision _____ of N.D.C.C. 11-18-02.2(6)

Signed _____ Date: _____

Grantee or Agent

If you choose number two you will have to pick one of the following and put the letter in the blank.

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 which resulted as a settlement of an estate.

E. All forced sales, mortgage foreclosures, and tax sales.

[redacted] sales to or from religious, charitable, or nonprofit organizations.

G. All sales when there is an indicated change of use by the new owners.

H. All transfer of ownership of property for which is given a quitclaim deed.

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I. Sales of property not assessable by law.

[redacted]gricultural lands of less than eighty acres (32.37 hectares).

K. A transfer that is pursuant to a judgment.

L. A transfer on death deed or revocation instrument authorized under chapter 30.1 - 32.1.

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3.15.2019
att #1

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Lawrence R. Klemin
District 47
3929 Valley Drive
Bismarck, ND 58503-1729

R: 701-222-2577
lklemin@nd.gov

Speaker of the House

Amendment to HB 1271

Section 2. Add a new subsection 5 to section 30.1-32.1-06:

5. An auditor's certificate of transfer under section 11-18-02 and a statement of full consideration under section 11-18-02.2 are not required to record a transfer on death deed or a revocation instrument.