

**2021 SENATE POLITICAL SUBDIVISIONS**

**SB 2247**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2247  
1/29/2021

A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code, relating to property disclosure requirements.

**Chairman Burckhard** opened the hearing on SB 2247 at 9:44 a.m. All members present: Senator Burckhard, Senator Anderson, Senator Lee, Senator Larson, Senator Oban, Senator Kannianen, Senator Oban.

### Discussion Topics:

- Providing protection for consumers
- Property disclosures
- Disclosing material facts

**[9:44] Senator Scott Meyer, District 18.** Introduced SB 2247.

**[9:47] Jill Beck, CEO, North Dakota Association of Realtors.** Provided testimony #4232 in favor.

**[9:52] Tricia Schlosser, Century 21 Morrison Realty.** Provided testimony #4194 in favor.

**[10:06] Gloria Palm Connor, Broker and Co-Owner, Beyond Realty, Fargo.** Provided testimony #4160 in favor.

**[10:11] Sandy Meyer, Real Estate Commission.** Introduced Abby Meyer to the committee.

**Senator Lee** moves **DO PASS**

**Senator Larson** seconded

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

**Senator Larson** will carry SB 2247.

**Additional written testimony:** N/A

**Chairman Burckhard** closed the hearing on SB 2247 at 10:12 a.m.

*Patricia Lahr, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2247: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2247 was placed on the Eleventh order on the calendar.



North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

January 29, 2021

Chairman Burckhard and Members of the Senate Political Subdivisions Committee, for the record my name is Jill Beck and I am the CEO representing the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® membership is made up of more than 2,100 REALTORS® and more than 250 Business Partner members.

I am writing to ask for support of Senate Bill 2247 to amend and reenact section 47-10-02.1 of the North Dakota Century Code relating to seller property disclosure requirements. Our Government Affairs Committee, as well as our Board of Directors, discussed bringing this proposed recommendation at just about every meeting over the last 18 months. For consumer protection we feel that this needs to change. So this bring us to where we are today.

There has been much confusion by our REALTOR® members so I am also of the opinion that those licensees that don't belong to our association and don't have us for guidance may also be confused or even not know what they don't know. Buyers and sellers are also confused and often times mislead by an "interpretation" of the current law.

I have checked with my counterparts around the nation and majority of the states do have mandatory property condition and not one of them is just for licensees. The enforcement piece has also been discussed and again those states that have laws that are similar they are enforced through the court of law.

There are REALTORS® in the business that will be testifying on what they see in the marketplace and why this should be changed to protect all consumers not just those that use REALTORS®.

We ask for your support for SB 2247 and would be happy to answer any questions you may have now or my contact info is below as well.

  
Jill Beck, CEO

North Dakota Association of REALTORS®

[Jill@ndrealtors.com](mailto:Jill@ndrealtors.com)

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January 29, 2021

*RE: Testimony in Support of SB 2247 – Property Disclosure Requirements*

Chairman Burckhard and Members of the Senate Political Subdivision Committee, for the record, my name is Tricia Schlosser. I am an active member of the Government Affairs Committee for the North Dakota Association of Realtors. I am also the broker and owner of Century 21 Morrison Realty with offices in markets throughout the state, including Jamestown, Bismarck, Beulah, and Dickinson. I am here to testify in favor of Senate Bill 2247.

The current NDCC 47-10-02.1 was passed in 2019 with the belief that it would provide consumer protection for buyers and sellers of residential property in the state of North Dakota. It does provide protection for many consumers – but not all of them. The statute language is short-sighted in its scope, and it has created a loophole by some consumers and even by some real estate professionals. The current language has caused great confusion for brokers and agents in our industry and has even resulted in financial repercussions for some buyers because it appears to conflict with case law in the state of North Dakota.

In 1985, the North Dakota Supreme Court ruled in *Holcomb v. Zinke*, that *a seller of defective property has a duty to disclose material facts which are known by the seller or should be known to the seller and which would not be discoverable by the buyer's exercise of ordinary care and diligence*. NDCC 47-10-02.1 does not change the case law precedence and enforcement by the courts – it just

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requires specific sellers to present written disclosure to potential buyer(s) on a specific timeline. As per case law, all other sellers of residential properties still need to disclose known defects – they are just not subject to a legislated timeline and can disclose these defects to a buyer verbally instead of in writing. Confusing? Exactly.

Too often in the last two years, consumers and licensed brokers and agents have misinterpreted Section 1 of NDCC 47-10-02.1 as, “If it is not an owner-occupied primary residence, and/or there is no licensed agent involved in the transaction, then the seller does not have to disclose known defects to a buyer.” It has resulted in licensed agents and brokers to inadvertently and inaccurately advise their clients that a seller does not have to disclose in certain instances. This level of misinterpretation has had real and expensive consequences for buyers. In just one instance, in July 2020, a buyer client ended up paying over \$11,700 for a new roof because the seller was instructed that he did not have to disclose any known defects on his single-family investment property, simply because he had not lived there. As a broker, I have also fielded over a dozen calls in the last two years from agents misinterpreting the seller’s obligation of disclosure, simply because of the wording in this statute. It is alarming how much confusion this statute has unintendedly caused and SB 2247 needs to be passed in order to rectify the confusion and misinterpretations as soon as possible.

It is important to address the concerns some may have when eliminating the language in Section 1(a) of NDCC 47-10-02.1. The first concern is that, if there is no licensee involved, then consumers will not know that sellers have to disclose known property defects. As citizens, it is our responsibility to know the law of the land. Consumers, whether buying or selling real property on their own, will have to not only know about disclosure, but they will have to also understand the legalities of transferring clear and marketable title, the possibility of capital gains taxes, and many other issues. Since 1985, and I dare say before, most sellers have understood that they should disclose known defects about their property that may affect the buyer’s intended use and enjoyment of it.

The second concern is regarding who will police the situation if a seller does not disclose known defects to potential buyers in writing. This answer has not changed since even prior to the landmark *Holcomb v. Zinke* case – the courts have historically handled and will always handle the disputes between buyers and sellers over damages resulting from nondisclosure of defects. Simply having a property disclosure statement filled out in a real estate licensee's records does not make a seller truthful when filling out the written disclosure. It does not happen often, but there are times a seller will advertently or inadvertently omit a material fact on the written disclosure and the buyer sues for damages. It is then up to the court to determine if the seller knew or should have known about the defect, if they actually disclosed it, and who has liability in each individual case.

The third concern is over who will collect the written property disclosure if a licensed agent is not doing so. The buyer and seller, regardless of a licensee's involvement in the transaction, have a responsibility to keep pertinent records regarding their sale or purchase. Again, just because a licensee has a copy of a written disclosure in a file, does not mean a seller is being truthful and does not guarantee a buyer quiet enjoyment of their new property.

SB 2247 also seeks to clarify that sellers must disclose defects to buyers of ALL residential properties, not just those that are an owner-occupied, primary residences. Opponents to this change would argue that sellers may not have full knowledge of all material defects in second homes, vacation homes, investment properties, and any other residential property they own. It is correct a seller may have limited knowledge of a property in which they do not reside. However, if the seller knows of a defect, they still need to disclose it, as it can still be enforced in the courts. If they do not have knowledge of a defect, then there is no way they can disclose it. Simply stated, sellers are bound to disclose only what they actually know. Amending this portion of 47-10-02.1 will eliminate confusion for licensees and make disclosure requirements clear for consumers.

Minnesota, Montana, and South Dakota have mandatory disclosure requirements for *all* sellers of residential properties, regardless if a real estate licensee is involved or not. These states also define

exceptions to the disclosure requirements. As you can see, the exceptions are written clearly in SB 2247. These reasonable exceptions involve statistically few transactions in the marketplace and allow for situations such as when one owner is conveying property to a fellow owner, or when a lender sells a foreclosed property and has no knowledge of property condition or defects.

The recommended change in Section 2 of NDCC 47-10-02.1 is that the written disclosure to the prospective buyer shall be made either before the parties enter into an agreement *or as otherwise determined by the Purchase Agreement*. This important addition to the statute allows for when real-life situations happen during the negotiation of a contract by a buyer and seller. This simple language gives buyers and sellers the ability to move forward to sign a contract even if the seller has not had time to fill out a written disclosure prior to the offer being negotiated. The buyer has the flexibility to make the purchase agreement contingent on the review and approval of the written disclosure within a contractually determined timeline rather than having to follow a one-size-fits all legislated timeline.

In summary, I strongly support consumer protection in the form of a written disclosure being mandatory for ALL sellers of ALL residential properties. And I support buyers and sellers having control over the timeline in which the written disclosure is made to the buyer. I respectfully ask that you vote **DO PASS ON SB 2247**. Thank you for your consideration. I am happy to answer any questions.

January 28, 2021

**RE: Senate Testimony - ND SB2247 – Property Disclosure Requirements**

Chairman Burckhard and Members of the Senate Political Subdivision Committee, my name is Gloria Palm Connor. I am currently serving on the Board of Directors for the North Dakota Association of Realtors and the Fargo-Moorhead Areas Association of Realtors Board of Directors. I am the broker and co-owner of Beyond Realty in Fargo.

I am testifying in support of the ND Senate Bill 2247 to amend and reenact section 47-10-02.1 of the North Dakota Century Code relating to Seller property disclosure requirements.

Based on North Dakota Case Law, the requirement for sellers to disclose material defects, has been on the books for over 35-years. The North Dakota Supreme Court set the standard for disclosure by the seller of real property in a court decision in the case Holcomb v. Zinke in 1985. In that case, the Court declared “a duty on the seller to disclosure material facts which are known or should be known to the seller and which would not be discoverable by the buyer’s exercise of ordinary care and diligence.”

It is of my opinion, and the opinion of many others in the real estate industry, that the current ND Century Code 47-10-02.1 confuses consumers, as buyers and sellers of real property. It infers sellers do not need to disclose material facts regarding their property if it is not their primary residence or if a real estate professional is not involved in the transaction. I contend that all sellers of residential real property (1-4 units) should be required to disclose material facts to buyers in the sale of their residential real estate. I believe current ND Century Code 47-10-02.1 is in direct conflict with the North Dakota Supreme Court ruling in the case of Holcomb v. Zinke.

I believe based on the current ND Century Code 47-10-02.1 real estate professionals may misinform their clients and sellers may misinterpret the current Century Code that if a real estate professional is not involved in the sale or it is not the seller’s primary residence, a disclosure of known material facts is not required. The proposed change in the language to Century Code helps to close a loophole in protecting the rights of buyers and reduces the potential liability of sellers.

Failure of a seller to disclose material facts or meet the requirement of the ND disclosure law should be enforced, like all other laws of the state, by the North Dakota judicial system should a buyer seek punitive damages due to a seller’s nondisclosure. I believe the proposed changes help to define a seller’s obligation to disclose material facts regarding the transfer of residential real property and gives the Courts a more definitive directive when determining liability if a case is brought before them.

The current North Dakota seller disclosure law does not protect all consumers and is confusing to many. I have confidence, if enacted into law, the proposed bill will better protect all consumers in the transfer of residential real property.

I would like to thank Chairman Burckhard and the Members of the committee for their time in hearing and considering my testimony.

Sincerely,

A handwritten signature in cursive script that reads "Gloria Palm Connor". The signature is written in dark ink and is positioned above the printed name.

Gloria Palm Connor, President/Broker

Beyond Realty Inc.  
4832 Amber Valley Pkwy. So.  
Fargo, ND 58104

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2247**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2247  
3/16/2021

<b>Property disclosure requirements.</b>
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(9:27) Chairman Lefor called the hearing to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

### Discussion Topics:

- Written property disclosure requirements

Sen Meyer~District 18-Grand Forks. Attachment #9376.

Jill Beck~ND Association of Realtors. Attachment #9450.

Trisha Schlosser~Broker/Owner-Century 21 Morrison Realty. Attachment #9364.

Dave Weiler~Century 21 Realtor-Representing self. Testified in support.

Gloria Palm Connor~President/Broker-Beyond Realty, Inc. Attachment #9388.

Chairman Lefor closes the hearing & Rep Louser requested the bill be held.

**Additional written testimony:** Attachments #9160, 9389, 9390, 9392 & 9393.

(10:27) End time.

*Ellen LeTang, Committee Clerk*



March 16, 2021



## North Dakota Senate

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Senator  
Scott Meyer  
District 18  
1624 Seventh Avenue North  
Grand Forks, ND 58203-3010  
218-791-7655  
scottmeyer@nd.gov

Committees:  
Finance and Taxation  
Government and Veterans  
Affairs

Mr. Chairman and members of the House Industry Business and Labor committee, SB 2247 is a bill that I introduced on behalf of the North Dakota Association of REALTORS, specifically their Government Affairs Committee.

There was a bill passed in 2019 by Rep Louser, and this is meant to clear up some issues that have arisen.

In Section 1, subsection 1 we're cleaning up ambiguous language that became confusing during a transaction. We are removing language in code referring to working with a real estate professional, as it currently stands a seller wouldn't have to disclose property defects if they don't use an a real estate professional in a transaction. This is meant to provide protection to consumers, and as I stated earlier remove confusion regarding who needs to disclose. Next, we're striking owner occupied property and replacing with a residential property with no more than four units. This is capped at 4 units because 1-4 unit properties are considered residential property.

Subsection 2 is relating to the time a property disclosure needs to be provided to the buyer in a transaction. Current language states that the parties involved in a transaction need to have a written property disclosure prior to putting a property in escrow or acceptance of an offer.

I can attest as a mortgage lender that this is rarely the case when I'm processing a loan. Many times my underwriter will verify that the borrower in the transaction has received the disclosure prior to giving final approval or Clear to Close.

The new language allows the parties involved in the transaction to provide a written property disclosure prior to closing. This is common practice in the industry.

In subsection 3, if a real estate professional assists in a transaction they shall retain copies of the written disclosures signed by both parties involved in a transaction.

Finally, section 6 just lists properties that are exempt from the disclosure requirement. For example, a foreclosure sale, sale from a parent to a child, or a new construction home just to name a few.

Mr. Chairman, I ask for a Do Pass recommendation on SB 2247. I have real estate professionals ready to shed further light on this bill, but I will stand for any questions you may have.



# 9450

North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

March 16, 2021

Chairman Lefor and Members of the House Industry, Business and Labor Committee, for the record my name is Jill Beck and I am the CEO representing the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® membership is made up of more than 2,200 REALTORS® and more than 250 Business Partner members.

I am writing to ask for support of Senate Bill 2247 to amend and reenact section 47-10-02.1 of the North Dakota Century Code relating to seller property disclosure requirements. Our Government Affairs Committee, as well as our Board of Directors, discussed bringing this proposed recommendation at just about every meeting over the last 18 months. For consumer protection we feel that this needs to be updated. So, this brings us to where we are today.

There has been much confusion by our REALTOR® members so I am also of the opinion that those licensees that don't belong to our association and don't have us for guidance may also be confused or even not know what they don't know. Buyers and sellers are also confused and often times misled by an "interpretation" of the current law. Section 6 is being added to clarify those transactions that would not have to have property condition disclosure in order to transfer title.

Those practicing real estate that are testifying after me will be able to give examples.

I have checked with my counterparts around the nation and majority of the states do have mandatory property condition and not one of them is just for licensees. The enforcement piece has also been discussed and again those states that have laws that are similar they are enforced through the court of law. In talking with the legal council of our National Association of REALTORS® that is just about the only way to enforce this and she did a poll for me on one of our bi-weekly calls we have with the state CEOs and that is what those that responded stated.

There are REALTORS® in the business that will be testifying on what they see in the marketplace and why this should be changed to protect all consumers not just those that use REALTORS® or real estate licensees.

We ask for your support for SB 2247 and would be happy to answer any questions you may have now or my contact info is below as well.

**Jill Beck, CEO**

**North Dakota Association of REALTORS®**

**[Jill@ndrealtors.com](mailto:Jill@ndrealtors.com)**

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March 16, 2021

RE: Testimony in Support of SB 2247 - Property Disclosure Requirements

Chairman Lefor and Members of the House IBL Committee, for the record, my name is Tricia Schlosser. I am an active member of the Government Affairs Committee for the North Dakota Association of Realtors. I am also the broker and owner of Century 21 Morrison Realty with offices in markets throughout the state, including Jamestown, Bismarck, Beulah, and Dickinson. I am here to testify in favor of Senate Bill 2247.

The intent of the current century code 47-10-02.1 was and still is to provide consumer protection for buyers and sellers of residential property in the state of North Dakota. In particular, Representative Louser has worked hard the last two sessions on disclosure issues and was instrumental in finally getting legislation passed, providing protection for many consumers. I stand before you today, because a bit of what some believe to be a loophole has been discovered and needs to be clarified. The current language unintentionally has caused confusion for brokers and agents in our industry because the code appears to conflict with case law in the state of North Dakota. Because of this, it has resulted in financial repercussions for some buyers.

In 1985, the North Dakota Supreme Court ruled in *Holcomb v. Zinke*, that a seller of defective property has a duty to disclose material facts which are known by the seller or should be known to the seller and which would not be discoverable by the buyer's exercise of ordinary care and diligence. NDCC 47-10-02.1 does not change the case law precedence and enforcement by the courts - it just requires specific sellers to present written disclosure to potential buyer(s) on a specific timeline. As per case law, all other sellers of residential properties still need to disclose known defects - they are just not subject to a legislated timeline and can disclose these defects to a buyer verbally instead of in writing. The confusion for licensees and consumers that has resulted was never the intention of this legislation.

Too often in the last two years, consumers and licensed brokers and agents have misinterpreted Section 1 of NDCC 47-10-02.1 as, "If it is not an owner-occupied primary residence, and/or there is no licensed agent involved in the transaction, then the seller does not have to disclose known defects to a buyer." It has resulted in licensed agents and brokers to inadvertently and inaccurately advise their clients that a seller does not have to disclose in certain instances. This level of misinterpretation has had real and expensive consequences for buyers. In just one instance, in July 2020, a buyer client ended up paying over \$11,700 for a new roof because the seller was instructed by his agent that he did not have to disclose any known defects on his single-family investment property, simply because he had not lived there. As a broker, I have also fielded over a dozen calls in the last two years from agents misinterpreting the seller's obligation of disclosure, simply because of the wording in this statute and how the courts continue to enforce the precedence of Holcomb vs Zinke. SB 2247 needs to be passed in order to resolve the misinterpretations as soon as possible.

It is important to address the concerns some may have when eliminating the language in Section 1(a) of NDCC 47-10-02.1. The first concern is, in the instance where there is no licensee involved in the transaction of residential real estate, consumers will not know that sellers have to disclose known property defects. As citizens, it is our responsibility to know the law of the land. Consumers, when buying or selling real property on their own, will have to not only know about disclosure, but they will have to also have to have a basic understanding of contract law, the process of conveying clear and marketable title, the possibility of capital gains taxes, and many other issues. Since 1985, and I dare say before, most sellers have understood that they should disclose known defects about their property that may affect the buyer's intended use and enjoyment of it. Establishing what is already being enforced in the courts in century code will reinforce this understanding for consumers.

The second concern is regarding who will police the situation if a seller does not disclose known defects to potential buyers in writing. This answer has not changed since even prior to the landmark Holcomb v. Zinke case - the courts have historically handled and will always handle the disputes between buyers and sellers over damages resulting from nondisclosure of defects. Simply having a property disclosure statement filled out in a real estate licensee's records does not make a seller truthful when filling out the written disclosure. It does not happen often, but there are times a seller will advertently or inadvertently omit a material fact on the written disclosure and the buyer sues for damages. My firm represented a buyer in 2020 who is pursuing damages from a seller in court because the buyer feels the seller omitted important information. Licensed agents represented both parties in this transaction, a property condition statement was signed by both parties, and the court will still be the one to determine if the seller knew or should have known about the defect, if they actually disclosed it, and who has liability in the case.

The third concern is over who will collect the written property disclosure if a licensed agent is not doing so. The buyer and seller, regardless of a licensee's involvement in the transaction, have a responsibility to keep pertinent records regarding their sale or purchase. Again, just because a licensee has a copy of a written disclosure in a file, does not mean a seller is being truthful and does not guarantee a buyer quiet enjoyment and intended use of their new property.

SB 2247 also seeks to clarify that sellers must disclose defects to buyers of ALL residential properties, not just those that are an owner-occupied, primary residences. Some may argue that sellers do not have full knowledge of all material defects in second homes, vacation homes, investment properties, and any other residential property they own but do not occupy. It is correct a seller may have limited knowledge of a property in which they do not reside. However, if the seller knows of a defect, they still need to disclose it, as it can still be enforced in the courts. If they do not have knowledge of a defect, then there is no way they can disclose it. Simply stated, sellers are bound to disclose only what they “actually know.” Amending this

portion of NDCC 47-10-02.1 will eliminate confusion for licensees and make disclosure requirements clear for consumers.

Minnesota, Montana, and South Dakota have mandatory disclosure requirements for all sellers of residential properties, regardless of a real estate licensee's involvement. These states also define exceptions to the disclosure requirements. As you can see, the exceptions are written clearly in SB 2247. These reasonable exceptions involve statistically few transactions in the marketplace and allow for situations such as when one owner is conveying property to a fellow owner, or when a lender sells a foreclosed property and has no knowledge of property condition or defects.

The recommended change in Section 2 of NDCC 47-10-02.1 is that the written disclosure to the prospective buyer shall be made either before the parties enter into an agreement or as otherwise determined by the Purchase Agreement. This important addition to the statute allows for when real life situations happen during the negotiation of a contract by a buyer and seller. This simple language gives buyers and sellers the ability to move forward to sign a contract even if the seller has not had time to fill out a written disclosure prior to the offer being negotiated and signed into contract. The buyer has the flexibility to make the purchase agreement contingent on the review and approval of the written disclosure within a contractually determined timeline rather than having to follow a one-size-fits all legislated timeline.

In summary, I strongly support consumer protection in the form of a written disclosure being mandatory for ALL sellers of ALL residential properties. And I support buyers and sellers having control over the timeline in which the written disclosure is made to the buyer. The Senate unanimously passed this bill 46-0. I respectfully ask that you vote DO PASS ON SB 2247. Thank you for your consideration. I am happy to answer any questions.

March 10, 2021

**RE: House Testimony - ND SB2247 – Property Disclosure Requirements**

Chairman Lefor and Members of the House Industry, Business and Labor Committee, my name is Gloria Palm Connor. I am currently serving on the Board of Directors for the North Dakota Association of Realtors and the Fargo-Moorhead Areas Association of Realtors Board of Directors. I am the broker and co-owner of Beyond Realty in Fargo.

I am testifying in support of the ND Senate Bill 2247 to amend and reenact section 47-10-02.1 of the North Dakota Century Code relating to Seller property disclosure requirements.

Based on North Dakota Case Law, the requirement for sellers to disclose material defects, has been on the books for over 35-years. The North Dakota Supreme Court set the standard for disclosure by the seller of real property in a court decision in the case Holcomb v. Zinke in 1985. In that case, the Court declared “a duty on the seller to disclosure material facts which are known or should be known to the seller and which would not be discoverable by the buyer’s exercise of ordinary care and diligence.”

It is of my opinion, and the opinion of many others in the real estate industry, that the current ND Century Code 47-10-02.1 confuses consumers, as buyers and sellers of real property. It infers sellers do not need to disclose material facts regarding their property if it is not their primary residence or if a real estate professional is not involved in the transaction. I contend that all sellers of residential real property (1-4 units) should be required to disclose material facts to buyers in the sale of their residential real estate. I believe current ND Century Code regarding property disclosure requirements is in direct conflict with the North Dakota Supreme Court ruling in the case of Holcomb v. Zinke.

I believe based on the current ND Century Code real estate professionals may misinform their clients and sellers may misinterpret the current Century Code that if a real estate professional is not involved in the sale or it is not the seller’s primary residence, a disclosure of known material facts is not required. The proposed change in the language to Century Code helps to close a loophole in protecting the rights of buyers and reduces the potential liability of sellers.

Failure of a seller to disclose material facts or meet the requirement of the ND disclosure law should be enforced, like all other laws of the state, by the North Dakota judicial system should a buyer seek punitive damages due to a seller’s nondisclosure. I believe the proposed changes help to define a seller’s obligation to disclose material facts regarding the transfer of residential real property and gives the Courts a more definitive directive when determining liability if a case is brought before them.



The current North Dakota seller disclosure law does not protect all consumers and is confusing to many. I have confidence, if enacted into law, the proposed bill will better protect all consumers in the transfer of residential real property.

I would like to thank Chairman Lefor and the Members of the committee for their time in hearing and considering my testimony.

Sincerely,

A handwritten signature in cursive script that reads "Gloria Palm Connor".

Gloria Palm Connor, President | Broker

Beyond Realty, Inc.  
4832 Amber Valley PKWY. So.  
Fargo, ND 58104



March 15, 2021

RE: Written Testimony in Support of SB 2247

Dear Chairman Lefor and Members of the House Industry, Business and Labor Committee,

The Fargo-Moorhead Area Association of REALTORS® is in support of SB 2247 regarding Property Disclosure Requirements. North Dakota Century Code 47-10-02.1 was passed in 2019 to provide protection for buyers and sellers of residential property in North Dakota. Unfortunately, the current statute has caused confusion for consumers, real estate licensees and others involved in real estate transactions. It is inferred that not all sellers are required to disclose material facts regarding their property if it is not their primary residence or when a real estate licensee is not involved in the transaction.

In the North Dakota Supreme Court case *Holcomb v. Zinke* in 1985, the court declared “a seller of defective property has a duty to disclose material facts which are known by the seller or should be known to the seller and which would not be discoverable by the buyer’s exercise of ordinary care and diligence.” A material fact in real estate is information about the property’s condition, whether apparent or not, that might cause a buyer to make a different decision or the price they will pay regarding the property purchase. Often, undisclosed material facts can cause serious financial repercussions to the buyer.

We believe that all sellers of residential property (1-4 units) should be required to disclose material facts to buyers in the sale of residential real estate, regardless of whether it is their primary residence or if there is a real estate licensee involved in the transaction. The changes in SB 2247 will ensure all consumers are protected.

The Fargo-Moorhead Area Association of REALTORS® represents almost 1,000 real estate licensees in the state of North Dakota and has been in existence since 1921. We ask that you support SB 2247.

Sincerely,

Nick Olson, President

Marti Kaiser, CEO

FARGO-MOORHEAD Area Association of REALTORS®

1535 42<sup>nd</sup> Street South, Suite 300, Fargo, ND 58103  
(701) 235-6679 • fmaar@fmrealtor.com



# 9389

SB2247

House Industry, Business & Labor Committee

Chair Lefor and Members of the Committee:

The Bismarck Mandan Board of REALTORS® supports SB2247 which requires – for greater consumer protection - property disclosure in all residential real estate transactions, not just those in which an agent is involved; and, the bill changes when the disclosure must be made which will allow buyers and sellers to make the decision on when the disclosure will be provided.

Representatives of our association participated with the ND Association of Realtors® and the ND Real Estate Commission in making the proposed revisions to the property disclosure language. We will appreciate your vote to move SB 2247 to the floor for adoption.

Thank you for your consideration and support.

Bismarck Mandan Board of Realtors®

Nancy Deichert, CEO, 701.471.2093

Joy Nelson, President, 701.202.8795



Grand Forks Area Association of Realtors®, Inc.  
1407 24th Avenue South Suite 340  
Grand Forks, North Dakota 58201  
701-775-4231 • Fax 701-795-9435  
[www.grandforksndrealestate.com](http://www.grandforksndrealestate.com)



Date: March 15, 2021

To: Members of the ND House Industry, Business and Labor Committee.  
From: Grand Forks Area Association of REALTORS®  
RE: Senate Bill 2247

The members of the Grand Forks Area Association of REALTORS® urge your support of Senate Bill 2247 concerning Sellers Property Disclosure.

The current law (NDCC 47-10-02.1 was passed in 2019 with the intent to provide protection to buyers and sellers of single-family housing if the seller uses a Real Estate Agent to help sell the property. Unfortunately, this has left a large group of consumers unprotected. Current law infers that sellers do not need to disclose material facts regarding their property if it is not their primary residence or if a Real Estate professional is not involved. This language has cause confusion and has resulted in financial repercussions for some buyers.

NDCC 47-10-03.1 also appears to conflict with current ND case law. Holcomb v. Zinke, 1985 states "a seller of defective property has a duty to disclose material facts which are known by the seller or should be known to the seller and which would not be discoverable by the buyer's exercise of ordinary care and diligence".

The language in Senate Bill 2247 ensures that all consumers are protected not just the ones using a real estate professional. The changes in this bill also give the control of when written disclosure happens back to the people so buyers and sellers can have control in their very unique situations rather than being dictated when a written disclosure must be delivered.

We ask your support of Senate Bill 2247.

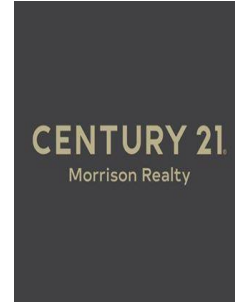
Russel Cray, President

A handwritten signature in blue ink, appearing to read "Russel Cray".

Grand Forks Area Association of REALTORS®



# 9392



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1142 W. Turnpike Ave  
Bismarck, ND 58501  
701-223-6654

SB2247

House Industry, Business & Labor Committee

Chair Lefor and Members of the Committee:

As a board member of the Bismarck Mandan Board of REALTORS®, I support SB2247 which requires – for greater consumer protection - property disclosure in all residential real estate transactions, not just those in which an agent is involved; and, the bill changes when the disclosure must be made which will allow buyers and sellers to make the decision on when the disclosure will be provided.

**Example:**

**I am now currently in the process of negotiations with a for sale by owner who didn't provide any information on their home. The waterheater is at the end of it's 25 yr life and was recommended to the buyer after a home inspection that it be replaced, also recommended by a professional plumber. Seller refuses, yet we find out that when they bought the home 2 years prior that the waterheater was also recommended to be replaced. (We didn't find that out from the seller.)**

We will appreciate your vote to move SB 2247 to the floor for adoption.

Thank you,  
Mary Ohlhauser, Realtor  
Century 21 Morrison Realty



Trademark Realty  
905 Tacoma Avenue, Suite 2  
Bismarck, ND 58504

# 9393

March 15, 2021

North Dakota State Legislature

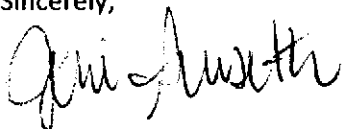
Dear North Dakota State Legislature,

I am writing today regarding NDCC 47-10-02.1 and the confusion the current language has caused our brokerage, clients and real estate agents.

- The current NDCC 47-10-02.1 was passed in 2019 with the intent to provide protection for buyers and sellers of residential property in ND for sales involving a real estate licensee
- Unfortunately, not all consumers are protected by NDCC 47-10-02.1 and the current statute language provides some consumers with a loophole. It infers that sellers do not need to disclose material facts regarding their property if it is not their primary residence or if a real estate professional is not involved in the transaction.
- Overall, the current language has caused confusion for consumers, brokers & agents, and has resulted in financial repercussions for some buyers
- Appears to conflict with ND case law – Holcomb v. Zinke, 1985 “a seller of defective property has a duty to disclose material facts which are known by the seller or should be known to the seller and which would not be discoverable by the buyer’s exercise of ordinary care and diligence” o The current NDCC 47-10-02.1 can be interpreted in a confusing and misleading way that contradicts this
- The changes to this law are for consumer protection – SB 2247 will ensure that all consumers are protected, not just ones who use REALTORS® or licensees
- The changes in this bill also give the control of when written disclosure happens back to the people – buyers and sellers can have control in their very unique situations rather being dictated when the disclosure needs to occur. The current statutory timeline potentially creates voidable contracts and also puts liability on the licensed agent when it should simply be determined by the buyer and seller.
- We ask that you support SB 2247

Thank you for your consideration.

Sincerely,



Jeni L Gruneth, REALTOR®  
Broker/Vice President, Trademark Realty

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2247  
3/24/2021

<b>Property disclosure requirements.</b>
--

(9:00) Chairman Lefor called the work session to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

### Discussion Topics:

- Committee work

Rep Louser walked through the amendment 21.0557.01002. Attachment #10640.

Chairman Lefor closed the work session.

Rep Louser moved amendment 21.0557.01002.

Rep Adams second.

Voice vote Motion carried.

Rep Stemen moved a Do Pass as Amended.

Rep Thomas second.

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 14-0-0 & Rep Louser is the carrier.

(10:09) End time.

*Ellen LeTang, Committee Clerk*



21.0557.01002  
Title.02000

Prepared by the Legislative Council staff for  
Representative Louser

March 22, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2247

Page 1, line 7, replace "subsection" with "subsections"

Page 1, line 7, after "6" insert "and 7"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, remove the overstrike over lines 9 through 11

Page 1, line 12, remove the overstrike over "~~b.~~      ~~The~~"

Page 1, line 12, remove "the"

Page 1, line 15, replace "by the prospective buyer in the" with "in an offer to"

Page 1, line 16, replace "a" with "the"

Page 1, line 16, after "final" insert "acceptance of the purchase"

Page 2, line 13, after "6." insert "An owner of real property shall disclose, in writing, all material facts that are known or should be known to the seller but would not be discoverable through another individual's exercise of ordinary care, to the purchaser of the real property before the purchase is final.

7."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2247: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2247 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "subsection" with "subsections"

Page 1, line 7, after "6" insert "and 7"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, remove the overstrike over lines 9 through 11

Page 1, line 12, remove the overstrike over "~~b. The~~"

Page 1, line 12, remove "the"

Page 1, line 15, replace "by the prospective buyer in the" with "in an offer to"

Page 1, line 16, replace "a" with "the"

Page 1, line 16, after "final" insert "acceptance of the purchase"

Page 2, line 13, after "6." insert "An owner of real property shall disclose, in writing, all material facts that are known or should be known to the seller but would not be discoverable through another individual's exercise of ordinary care, to the purchaser of the real property before the purchase is final.

7."

Renumber accordingly

Sixty-seventh  
Legislative Assembly  
of North Dakota

# SENATE BILL NO. 2247

Introduced by

Senators Meyer, Larson

Representatives Boschee, B. Koppelman

1 A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code,  
2 relating to property disclosure requirements.

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

4 **SECTION 1. AMENDMENT.** Section 47-10-02.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **47-10-02.1. Property disclosure - Requirements - Exceptions.**

- 7 1. ~~This~~Except as provided under ~~subsection~~subsections 6 and 7, this section applies to a  
8 transaction for the sale, exchange, or purchase of real property if:
  - 9 a. A real estate broker, real estate broker associate, or real estate salesperson who  
10 is associated with a real estate brokerage firm represents or assists a party to the  
11 transaction; and
  - 12 b. ~~The~~the real property is ~~an owner-occupied primary residence~~a residential  
13 dwelling with no more than four units located in this state being sold or  
14 exchanged by the owner.
- 15 2. ~~Before~~Except as otherwise provided ~~by the prospective buyer in the~~in an offer to  
16 purchase agreement, before the parties sign ~~and~~the final acceptance of the purchase  
17 agreement for the sale, exchange, or purchase of real property, the seller shall make a  
18 written disclosure to the prospective buyer. The written disclosure must include all  
19 material facts of which the seller is aware could adversely and significantly affect an  
20 ordinary buyer's use and enjoyment of the property or any intended use of the  
21 property of which the seller is aware. The written disclosure must include latent  
22 defects, general condition, environmental issues, structural systems, and mechanical  
23 issues regarding the property. The seller shall make the written disclosure in good faith  
24 and based upon the best of the seller's knowledge at the time of the disclosure.

- 1       3. FollowingIf a real estate broker, real estate broker associate, or real estate  
2       salesperson who is associated with a real estate brokerage firm represents or assists  
3       a party to the transaction, following the sale, exchange, or purchase of real property,  
4       the brokerage firm shall retain a copy of the written disclosure completed and signed  
5       by the seller and signed by the prospective buyer. The brokerage firm's duties under  
6       this section do not supersede any other common law or statutory duties.
- 7       4. The North Dakota real estate commission shall establish and make available a written  
8       disclosure form meeting the requirements of this section. In establishing the form, the  
9       commission shall consult with stakeholders, such as professional organizations.
- 10      5. If a real estate broker, real estate broker associate, or real estate salesperson who is  
11      associated with a real estate brokerage firm violates this section, the state real estate  
12      commission may investigate and take disciplinary action under section 43-23-11.1.
- 13      6. An owner of real property shall disclose, in writing, all material facts that are known or  
14      should be known to the seller but would not be discoverable through another  
15      individual's exercise of ordinary care, to the purchaser of the real property before the  
16      purchase is final.
- 17      7. This section does not apply to transactions for the sale, exchange, or purchase of real  
18      property made:
  - 19      a. Pursuant to a court order;
  - 20      b. Between government agencies;
  - 21      c. By a mortgagor in default to a mortgagee;
  - 22      d. Pursuant to a foreclosure sale;
  - 23      e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property  
24      by a:
    - 25      (1) Foreclosure;
    - 26      (2) Deed in lieu of foreclosure; or
    - 27      (3) Collateral assignment of beneficial interest;
  - 28      f. By a fiduciary administering a decedent's estate, guardianship, conservatorship,  
29      or trust;
  - 30      g. Between co-owners of the real property;
  - 31      h. To a spouse, child, parent, sibling, grandchild, or grandparent; or

Sixty-seventh  
Legislative Assembly

- 1           i. If the real property is newly constructed residential real property with no previous
- 2           occupancy.

**2021 CONFERENCE COMMITTEE**

**SB 2247**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2247  
4/14/2021  
Conference Committee

A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code, relating to property disclosure requirements.

**Chairman Burckhard** opened the conference committee on SB 2247 at 2:32 p.m.  
Members present: Senator Burckhard, Larson, Kannianen, Representative Louser, Ruby, Adams.

### Discussion Topics:

- House actions
- Written disclosure V.S. property condition statement
- Property purchasing process
- Consumer protection
- Unknown property defects

**[2:41] Casey Chapman, Attorney, ND Association of Realtors.** Provided clarification on SB 2247 house amendment language to the committee - #10640.

**(2:53) Representative Louser and Casey Chapman** will meet to further discuss Amendment and bring back to the committee next week

**Chairman Burckhard** adjourned the conference committee on SB 2247 at 2:58 p.m.

*Patricia Lahr, Committee Clerk*

21.0557.01002

Sixty-seventh  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2247**

Introduced by

Senators Meyer, Larson

Representatives Boschee, B. Koppelman

1 A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code,  
2 relating to property disclosure requirements.

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

4 **SECTION 1. AMENDMENT.** Section 47-10-02.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **47-10-02.1. Property disclosure - Requirements - Exceptions.**

- 7 1. ~~This~~Except as provided under ~~subsection~~subsections 6 and 7, this section applies to a  
8 transaction for the sale, exchange, or purchase of real property if:
- 9 a. A real estate broker, real estate broker associate, or real estate salesperson who  
10 is associated with a real estate brokerage firm represents or assists a party to the  
11 transaction; and
- 12 b. ~~The~~the real property is ~~an owner-occupied primary residence~~a residential  
13 dwelling with no more than four units located in this state being sold or  
14 exchanged by the owner.
- 15 2. ~~Before~~Except as otherwise provided ~~by the prospective buyer in the~~in an offer to  
16 purchase agreement, before the parties sign ~~and the final~~acceptance of the purchase  
17 agreement for the sale, exchange, or purchase of real property, the seller shall make a  
18 written disclosure to the prospective buyer. The written disclosure must include all  
19 material facts of which the seller is aware could adversely and significantly affect an  
20 ordinary buyer's use and enjoyment of the property or any intended use of the  
21 property of which the seller is aware. The written disclosure must include latent  
22 defects, general condition, environmental issues, structural systems, and mechanical  
23 issues regarding the property. The seller shall make the written disclosure in good faith  
24 and based upon the best of the seller's knowledge at the time of the disclosure.



- 1       3. FollowingIf a real estate broker, real estate broker associate, or real estate  
2       salesperson who is associated with a real estate brokerage firm represents or assists  
3       a party to the transaction, following the sale, exchange, or purchase of real property,  
4       the brokerage firm shall retain a copy of the written disclosure completed and signed  
5       by the seller and signed by the prospective buyer. The brokerage firm's duties under  
6       this section do not supersede any other common law or statutory duties.
- 7       4. The North Dakota real estate commission shall establish and make available a written  
8       disclosure form meeting the requirements of this section. In establishing the form, the  
9       commission shall consult with stakeholders, such as professional organizations.
- 10      5. If a real estate broker, real estate broker associate, or real estate salesperson who is  
11      associated with a real estate brokerage firm violates this section, the state real estate  
12      commission may investigate and take disciplinary action under section 43-23-11.1.
- 13      6. An owner of real property shall disclose, in writing, all material facts that are known or  
14      should be known to the seller but would not be discoverable through another  
15      individual's exercise of ordinary care, to the purchaser of the real property before the  
16      purchase is final.
- 17      7. This section does not apply to transactions for the sale, exchange, or purchase of real  
18      property made:
  - 19      a. Pursuant to a court order;
  - 20      b. Between government agencies;
  - 21      c. By a mortgagor in default to a mortgagee;
  - 22      d. Pursuant to a foreclosure sale;
  - 23      e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property  
24      by a:
    - 25      (1) Foreclosure;
    - 26      (2) Deed in lieu of foreclosure; or
    - 27      (3) Collateral assignment of beneficial interest;
  - 28      f. By a fiduciary administering a decedent's estate, guardianship, conservatorship,  
29      or trust;
  - 30      g. Between co-owners of the real property;
  - 31      h. To a spouse, child, parent, sibling, grandchild, or grandparent; or

Sixty-seventh  
Legislative Assembly

- 1           i. If the real property is newly constructed residential real property with no previous
- 2           occupancy.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2247  
4/20/2021  
Conference Committee

A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code, relating to property disclosure requirements.

**Chairman Burckhard** opened the conference committee on SB 2247 at 9:30 a.m.  
Members present: Senator Burckhard, Larson, Kannianen, Representative Louser, D. Ruby, Adams.

### Discussion Topics:

- Proposed amendment
- Real property language
- Commercial property exclusion

**[9:30] Chairman Burckhard** called the conference committee to order, all members present.

**[9:31] Representative Scott Louser, District 5.** Provided the committee with proposed amendment 21.0557.01003 (testimony #11572).

**Representative Adams** moves the **HOUSE RECEDE FROM HOUSE AMENDMENTS AND AMEND AS FOLLOWS:** 21.0557.01003  
**Senator Larson** seconded.

Motion passed 6-0-0.

**Senator Larson** and **Representative Louser** will carry SB 2247.

**Additional written testimony:** N/A

**Chairman Burckhard** closed the conference committee on SB 2247 at 9:40 a.m.

*Patricia Lahr, Committee Clerk*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2247

That the House recede from its amendments as printed on page 1082 of the Senate Journal and page 1287 of the House Journal and that Senate Bill No. 2247 be amended as follows:

Page 1, line 7, replace "Except as provided under subsection 6" with "Unless the transaction is exempted under subsection 7"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, remove the overstrike over lines 9 through 11

Page 1, line 12, remove the overstrike over "b. The"

Page 1, line 12, remove "the"

Page 1, line 15, remove "by the prospective buyer in the purchase"

Page 1, line 16, remove "agreement, before"

Page 1, line 16, overstrike "the parties sign"

Page 1, line 16, remove "a final"

Page 1, line 16, overstrike "agreement for the sale, exchange, or"

Page 1, overstrike lines 17 through 21

Page 1, line 22, overstrike "structural systems, and mechanical issues regarding the property" and insert immediately thereafter "in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to subsection 1 shall prepare a written disclosure form and shall make the written disclosure form available to the prospective buyer. The written disclosure form must include all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure form must be in the form of the written disclosure form established by the North Dakota real estate commission under subsection 4 or in a substantially similar form and must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property"

Page 1, line 23, overstrike "make" and insert immediately thereafter "complete"

Page 2, line 13, after "6." insert "Unless the transaction is subject to subsection 1 or exempted under subsection 7, the seller of real property that is a residential dwelling with no more than four units located in this state being sold or exchanged by the owner shall comply with the provisions of this subsection. Except as otherwise provided in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to this subsection shall disclose to the buyer, in writing, all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure may be in the form of a written property disclosure form."

7."

Renumber accordingly

**2021 SENATE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2247 as engrossed

**Senate Political Subdivisions Committee**

- Action Taken**    ☐ **SENATE accede to House Amendments**  
☐ **SENATE accede to House Amendments and further amend**  
☐ **HOUSE recede from House amendments**  
☒ **HOUSE recede from House amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Adams      Seconded by: Senator Larson

Senators				Yes	No		Representatives				Yes	No
Senator Burckhard				X			Representative Louser				X	
Senator Larson				X			Representative D. Ruby				X	
Senator Kannianen				X			Representative Adams				X	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count      Yes: 6      No: 0      Absent: 0

Senate Carrier Senator Larson      House Carrier Representative Louser

LC Number 21.0557 . 01003 of amendment

LC Number 21.0557 . 03000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Offer purchase agreement and a written property disclosure form.

Insert LC: 21.0557.01003  
Senate Carrier: Larson  
House Carrier: Louser

**REPORT OF CONFERENCE COMMITTEE**

**SB 2247:** Your conference committee (Sens. Burckhard, Larson, Kannianen and Reps. Louser, D. Ruby, Adams) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1082-1287, adopt amendments as follows, and place SB 2247 on the Seventh order:

That the House recede from its amendments as printed on page 1082 of the Senate Journal and page 1287 of the House Journal and that Senate Bill No. 2247 be amended as follows:

Page 1, line 7, replace "Except as provided under subsection 6" with "Unless the transaction is exempted under subsection 7"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, remove the overstrike over lines 9 through 11

Page 1, line 12, remove the overstrike over "b. The"

Page 1, line 12, remove "the"

Page 1, line 15, remove "by the prospective buyer in the purchase"

Page 1, line 16, remove "agreement, before"

Page 1, line 16, overstrike "the parties sign"

Page 1, line 16, remove "a final"

Page 1, line 16, overstrike "agreement for the sale, exchange, or"

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Page 1, line 22, overstrike "structural systems, and mechanical issues regarding the property" and insert immediately thereafter "in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to subsection 1 shall prepare a written disclosure form and shall make the written disclosure form available to the prospective buyer. The written disclosure form must include all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure form must be in the form of the written disclosure form established by the North Dakota real estate commission under subsection 4 or in a substantially similar form and must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property"

Page 1, line 23, overstrike "make" and insert immediately thereafter "complete"

Page 2, line 13, after "6." insert "Unless the transaction is subject to subsection 1 or exempted under subsection 7, the seller of real property that is a residential dwelling with no more than four units located in this state being sold or exchanged by the owner shall comply with the provisions of this subsection. Except as otherwise provided in an offer to purchase agreement, before the parties sign the final acceptance of the purchase agreement for the sale, exchange, or purchase of the real property, the seller in a transaction subject to this subsection shall disclose to the buyer, in writing, all material facts the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure may be in the form of a written property disclosure form."

**Insert LC: 21.0557.01003**  
**Senate Carrier: Larson**  
**House Carrier: Louser**

Z."

Renumber accordingly

SB 2247 was placed on the Seventh order of business on the calendar.



Sixty-seventh  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2247**

Introduced by

Senators Meyer, Larson

Representatives Boschee, B. Koppelman

1 A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code,  
2 relating to property disclosure requirements.

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

4 **SECTION 1. AMENDMENT.** Section 47-10-02.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **47-10-02.1. Property disclosure - Requirements - Exceptions.**

- 7 1. This ~~Except as provided under subsection 6~~ Unless the transaction is exempted under  
8 subsection 7, this section applies to a transaction for the sale, exchange, or purchase  
9 of real property if:
- 10 a. A real estate broker, real estate broker associate, or real estate salesperson who  
11 is associated with a real estate brokerage firm represents or assists a party to the  
12 transaction; and
- 13 b. ~~The~~ the real property is an owner-occupied primary residence a residential  
14 dwelling with no more than four units located in this state being sold or  
15 exchanged by the owner.
- 16 2. ~~Before Except as otherwise provided by the prospective buyer in the purchase~~  
17 ~~agreement, before the parties sign a final agreement for the sale, exchange, or~~  
18 ~~purchase of real property, the seller shall make a written disclosure to the prospective~~  
19 ~~buyer. The written disclosure must include all material facts of which the seller is~~  
20 ~~aware could adversely and significantly affect an ordinary buyer's use and enjoyment~~  
21 ~~of the property or any intended use of the property of which the seller is aware. The~~  
22 ~~written disclosure must include latent defects, general condition, environmental issues,~~  
23 ~~structural systems, and mechanical issues regarding the property~~ in an offer to  
24 purchase agreement, before the parties sign the final acceptance of the purchase

- 1 agreement for the sale, exchange, or purchase of the real property, the seller in a  
2 transaction subject to subsection 1 shall prepare a written disclosure form and shall  
3 make the written disclosure form available to the prospective buyer. The written  
4 disclosure form must include all material facts the seller is aware could adversely and  
5 significantly affect an ordinary buyer's use and enjoyment of the property or any  
6 intended use of the property of which the seller is aware. The written disclosure form  
7 must be in the form of the written disclosure form established by the North Dakota real  
8 estate commission under subsection 4 or in a substantially similar form and must  
9 include latent defects, general condition, environmental issues, structural systems,  
10 and mechanical issues regarding the property. The seller shall ~~make~~complete the  
11 written disclosure in good faith and based upon the best of the seller's knowledge at  
12 the time of the disclosure.
- 13 3. FollowingIf a real estate broker, real estate broker associate, or real estate  
14 salesperson who is associated with a real estate brokerage firm represents or assists  
15 a party to the transaction, following the sale, exchange, or purchase of real property,  
16 the brokerage firm shall retain a copy of the written disclosure completed and signed  
17 by the seller and signed by the prospective buyer. The brokerage firm's duties under  
18 this section do not supersede any other common law or statutory duties.
- 19 4. The North Dakota real estate commission shall establish and make available a written  
20 disclosure form meeting the requirements of this section. In establishing the form, the  
21 commission shall consult with stakeholders, such as professional organizations.
- 22 5. If a real estate broker, real estate broker associate, or real estate salesperson who is  
23 associated with a real estate brokerage firm violates this section, the state real estate  
24 commission may investigate and take disciplinary action under section 43-23-11.1.
- 25 6. Unless the transaction is subject to subsection 1 or exempted under subsection 7, the  
26 seller of real property that is a residential dwelling with no more than four units located  
27 in this state being sold or exchanged by the owner shall comply with the provisions of  
28 this subsection. Except as otherwise provided in an offer to purchase agreement,  
29 before the parties sign the final acceptance of the purchase agreement for the sale,  
30 exchange, or purchase of the real property, the seller in a transaction subject to this  
31 subsection shall disclose to the buyer, in writing, all material facts the seller is aware

1           could adversely and significantly affect an ordinary buyer's use and enjoyment of the  
2           property or any intended use of the property of which the seller is aware. The written  
3           disclosure may be in the form of a written property disclosure form.

4           7. This section does not apply to transactions for the sale, exchange, or purchase of real  
5           property made:

6           a. Pursuant to a court order;

7           b. Between government agencies;

8           c. By a mortgagor in default to a mortgagee;

9           d. Pursuant to a foreclosure sale;

10          e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property  
11           by a:

12           (1) Foreclosure;

13           (2) Deed in lieu of foreclosure; or

14           (3) Collateral assignment of beneficial interest;

15          f. By a fiduciary administering a decedent's estate, guardianship, conservatorship,  
16           or trust;

17          g. Between co-owners of the real property;

18          h. To a spouse, child, parent, sibling, grandchild, or grandparent; or

19          i. If the real property is newly constructed residential real property with no previous  
20           occupancy.