

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1252

2001 HOUSE JUDICIARY

HB 1252

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1252

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-22-01

Tape Number	Side A	Side B	Meter #
Tape 1	x		01 to 1238
	x		1308 to 2280
Committee Clerk Signature <i>Joan Durr</i>			

Minutes: Chr DeKrey opened the hearing on HB 1252 and asked the clerk to read the title.

Relating to signatures on notarial certificates and to amend and reenact section ND Century Code relating to documents entitled to recording.

Rep Haas: District 36 Taylor North Dakota. Sponsor of HB 1252. This bill relates to documents entitled to recording, page 2 section 2 - executed with an original signature, also relating to section 44-06-13.1 line 7 and 8 . the signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law. The reason for exception is, as e-commerce continues to expand, the need for a provision for something other than original signature will be required.

Chr DeKrey: Are there any questions for Rep Haas, if not thank you for appearing in front of the committee.

Al Jaeger: Secretary of State (see attached testimony)

Rep Delmore: What is the main problem that you see with the stamped signature?

Al Jaeger: We have other problems, it could be other ways, but the rubber stamp is the most common.

Rep Delmore: As long as there is a signature, why do you have a problem with the stamp, we use it for a number of things.

Al Jaeger: The problems, anyone can use the stamp but only you can affix your signature to a document.

Rep Delmore: Can you state where there has been a specific problem.

Al Jaeger: I am not aware, but there well may be one with different issues being raised.

Rep Kretschmar: If someone signs legal papers in another state, such as South Dakota, how is it recorded here?

Al Jaeger: we already have a law in place that recognizes the signatures done in another state.

Rep Mahoney: when I look at this, I'm trying to see what the problem is.

Al Jaeger: we started the process of this bill, because of a problem in the Register of Deeds Office.

Rep Mahoney: Why do you feel that it has to be an original signature, where is the problem?

Al Jaeger: As I understand it, the person appears before you and says yes, that is my signature and that is my wife's signature and it is alright. You can't go there from here. The idea of a executable signature on a document should be the original signature.

Chr DeKrey: We will take a break in the hearing so that the person who has to testify on another bill, may testify and then go to another hearing. We will resume the hearing on HB 1252.

Pamela Tamayo Stenchjem: Dunn county Register of Deeds/ex-officio Clerk of Courts (see attached testimony.

Rep Mahoney: Are you aware of another bill that deals with electronic signatures?

Pamela Stenehjem: The bill effects more on the filing of the document.

Rep Kretschmar: Are you getting more of this as a problem?

Pamela Stenehjem: The documents that are copies, we are having difficulty in discerning which copies are the original. One way to check is to see if the ink is blue or black. We are looking at this because we have to maintain integrity and to avert possible fraud down the road.

Chr DeKrey: Is there anyone else wishing to appear in support of HB 1252, is there anyone wishing to testify in opposition?

Ron Ness: North Dakota Petroleum Council. I have worked with the Secretary of State with some of our concerns. In section one, The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law. We can live with that section. Our concern in section two, line one page two, any acknowledgment must be executed with an original signature. With the age of electronic signatures, we have land deeds and leases of people who are not in the state or that are signed in other states. The Register of Deeds says no we cannot accept this signature, this can cause a delay or the possibility of losing the lease. If the acknowledge is legal in another state why can it not be allowed in this state.

Chr DeKrey: Don't we have laws now that cover this?

Ron Ness: This bill doesn't acknowledge this, the law would over ride anything else.

Rep Mahoney: So you are ok with section one, you just have concerns with section two? Can you use a rubber stamp now in section one?

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1252
Hearing Date 01-22-01

Mr Ness: Section one would not allow the use of a rubber stamp. But section two, if enacted governing documents that are signed out of state exceeds the authority of the state. You cannot govern issues done outside the state.

Rep Delmore: What you are asking for is that the same standards apply.

Ron Ness: I don't believe that I am following your question.

Rep Delmore: You want the law to have the same standards in state as out of state?

Ron Ness: If tow parties agree outside of the state of North Dakota and it is authorized in that state, we are trying to impose our law in another state.

Chr DeKrey: If there are no other questions, we will close the hearing on HB 1252.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1252 b

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-13-01

Tape Number	Side A	Side B	Meter #
1		xx	3578--4250
Committee Clerk Signature <i>John DeKrey</i>			

Minutes: Chair DeKrey : Take up HB1252.

Cory Fong, Sec. State Office : I think the bill is good and we don't have any amendments.

Rep. Delmore : If we pass this bill, it will mean that no notary will be able to use the stamp with his/her name on it when dealing with electronic filing?

Cory : No.

Rep. Delmore : If we can accept electronic signatures in all those things, why do we need this bill. The idea that someone has to use their real signature in something like that. Some of our notaries go through way too many documents in a day. I think the stamp has been successful.

Chair DeKrey : Are we talking about the person signing the document or notary?

Rep. Klemin : I think we need to have a basic understanding of what a notary does. A notary is not to notarize a signature that has been laying around on a stack for some time.

Cory : This is the stamping of the individual who is being notarized. There is a stamp that the notary uses. We are not talking about that.

Page 2
House Judiciary Committee
Bill/Resolution Number HB1252 b
Hearing Date 2-13-01

Rep. Grande : I move a DO PASS.

Rep. Brekke : I second.

VOTE: 10 YES and 2 NO with 3 absent. PASSED. Rep. Maragos will carry the bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1252c

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-20-01

Tape Number	Side A	Side B	Met. #
TAPE I	X		01 to 294
TAPE I	X		1887 to 2141
Committee Clerk Signature <i>Stan Diers</i>			

Minutes: Chairman DeKrey called the committee to order and we will take up HB 1252.

Al Jaeger: Secretary of State came in to explain the amendments. This bill is the original signature bill, it was passed out of committee and referred back to this committee. The wording in the amendment before you is acceptable to all parties. If those are adopted, I am comfortable with it, everyone is comfortable with it.

DISCUSSION

COMMITTEE ACTION

Rep Wrangham moved the Jaeger amendment. Rep Kingsbury seconded.

Chairman DeKrey: called for a voice vote on the amendments. Motion carries.

What are the wishes of the committee? Rep Maragos moved a DO PASS as amend. seconded by Rep Disrud.

DISCUSSION

Page 2

House Judiciary Committee

Bill/Resolution Number 02-20-01

Hearing Date HB 1252

Chairman DeKrey: The clerk will call the roll on a DO PASS as amend. The motion passes with

14 YES, 1 NO and 0 ABSENT. Carrier Rep Maragos.

Date: 02-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1252

House JUDICIARY

Committee

- ☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Motion Made By

Rep Grande

Seconded By

Rep Brekke

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud	✓				
Rep Bruce Eckre		✓			
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney					
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham					

Total (Yes) 10 No 2

Absent

3

Floor Assignment

Rep Maragos

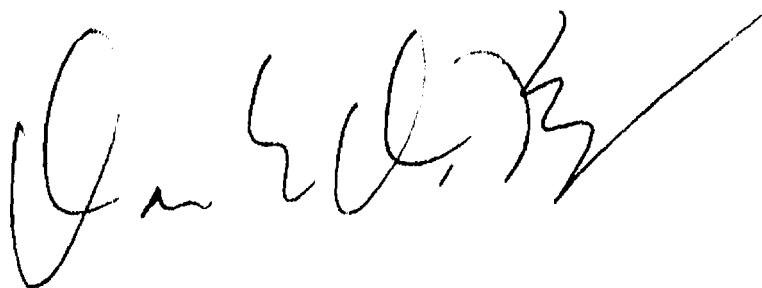
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 13, 2001 11:48 a.m.

Module No: HR-26-3178
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1252: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(10 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1252 was placed on the
Eleventh order on the calendar.

A handwritten signature in black ink, appearing to read "John DeKrey", with a long horizontal stroke extending to the right.

PROPOSED AMENDMENT TO HOUSE BILL 1252

Page 2, line 1, after the first underscored comma insert "or the law of the state where the instrument or document was executed."

Renumber accordingly

18282.0101
Title.0200

Adopted by the Judiciary Commission
February 20, 2001

VK
2/20/01

HOUSE AMENDMENTS TO HB 1252 HOUSE JUDICIARY 02-20-01

Page 2, line 1, after "by" insert "the" and after "law" insert "of this state or the law of the state in which the instrument or document was executed"

Renumber accordingly

Date: 02-20-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1-B-1252

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Rep Maragos Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 14 No 1

Absent 0

Floor Assignment Rep Maragos

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

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 1:16 p.m.

Module No: HR-31-3998
Carrier: Maragos
Insert LC: 18282.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1252: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1252 was placed on the Sixth order on the calendar.

Page 2, line 1, after "by" insert "he" and after "law" insert "of this state or the law of the state in which the instrument or document was executed"

Renumber accordingly

2001 SENATE JUDICIARY

HB 1252

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1252

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 12th, 2001

Tape Number	Side A	Side B	Meter #
1	x		38.0-50.3
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1252.

Senator Espgaard, appeared in favor of bill and introduced it to the Secretary of State.

Al Jaeger, Secretary of State, (testimony attached) supports the bill.

Senator Traynor, do any states permit signing without original?

Al Jaeger, not that we are aware of.

Senator Watne, on line 12- Are those the out of state?

Al Jaeger, no, that is on page 2.

Senator Watne, what exceptions are there?

Al Jaeger, that is in the existing law and it has been enforced.

Senator Traynor, copies of certified document, would be on that.

Rep Haas, district 36, prime sponsor of the bill. Original signature needs to be reemphasized.

Senator Traynor, closed the hearing on HB 1252.

Page 2

Senate Judiciary Committee

Bill/Resolution Number 1252

Hearing Date March 12th, 2001

SENATOR WATNE MOTIONED TO DO PASS, SECONDED BY SENATOR LYSON.

VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR

BERCIER VOLUNTEERED TO CARRY THE BILL.

Date: 8/12/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate	Judiciary	Committee
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☐ Subcommittee on Do Pass
or _____

☐ Conference Committee

Legislative Council Amendment Number HB 1252

Action Taken

Motion Made By Watson Seconded By Lynn

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment *Burn*

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

REPORT OF STANDING COMMITTEE (410)
March 12, 2001 1:15 p.m.

Module No: SR-42-5346
Carrier: Bercler
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1252, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO
PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1252 was
placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1252



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505 0500

January 22, 2001

TO: Rep. DeKrey and Members - House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1252 - Original Signatures required for notarizing and recording

This bill is the result of a cooperative effort between the Secretary of State's office and the North Dakota Register of Deeds Association to clarify state laws related to notarization and recording.

Section 1 of the bill makes it a prohibited act for a notary to notarize a signature on a document, which is not an original signature. In other words, a notary cannot notarize a signature that has been affixed to a document by the means of a rubber stamp. In those cases where the executor of a document is unable to affix a signature because of an inability to write, the notary is not prevented from notarizing an original mark, such as an X, as long as it is original. This is already permissible under current law.

The prohibited acts, which are currently in state law, are listed in the following section of law.

44-06-13.1. Prohibited acts - Penalty.

A notary public may not notarize a signature on a document if:

1. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. The notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized.
A notary public who violates this section is guilty of an infraction and the notary public's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

Section 2 of the bill amends a section of law, which is found in Chapter 47-19. That is the chapter that pertains to recording and includes the guidelines that County Register of Deeds must follow. It clarifies the pre-requisites found in 47-19-03 that only instruments having original signatures can be accepted for recording.

However, in both sections of the bill, there is the modifier, "except as otherwise provided by law," that was intentionally included to not prohibit the recording or notarization of documents that may have been created under existing or yet to be enacted laws. For example, there are laws related to electronic signatures, which have not yet been adopted and which may have different legal guidelines regarding notarization and recording. This modifier also would apply to any other laws in the Century Code, which may provide for explicit recording guidelines for specific documents.

House Bill No. 1252
Testimony of Pamela Tamayo Stenehjem
Dunn County Register of Deeds/ex-officio Clerk of Court
January 22, 2001
Prairie Room, State Capitol

My name is Pamela Tamayo Stenehjem. I am the Dunn County Register of Deeds/ex-officio Clerk of Court and I am here on behalf of the Registers of Deeds Association.

As the recorders of real estate documents: surface and mineral deeds; mortgages, liens; and miscellaneous documents; affecting title to real property, one of the purposes of HB 1252 is to maintain the integrity of a document presented for recording.

HB 1252 requires an original signature of the party executing the document and also requires the original signature of the notary public on the acknowledgment.

There is an Attorney General's opinion that was issued November 13, 1996, in response to a letter from the Kidder County State's Attorney. Although the issue was whether a "copy" of a document could be recorded, the last paragraph in the opinion includes a statement regarding original signatures:

"Based upon the foregoing, it is my opinion that unless a statute specifically authorizes the filing or recording of a copy, the document to be filed must contain original signatures and, if required to be acknowledged, an original acknowledgment." (Attachment 1)

HB 1252 will put into statute the merits of this opinion.

The Registers of Deeds, along with the Secretary of State, are asking for your support on HB 1252.

I thank you for your time and will try to answer any questions you may have.

November 13, 1996

Mr. Jerry Renner
Kidder County State's Attorney
PO Box 229
Steele, ND 58482-0229

Dear Mr. Renner:

Thank you for your letter asking whether a document must have an original signature to be recorded by the county register of deeds or whether a photocopy of a signed document is sufficient for recording. You also ask whether the acknowledgment needs to be an original with an imprinted seal or whether a photocopy of the notary's signature and seal are sufficient for recording.

The general rule is that the original instrument must be filed rather than a copy, unless the statute specifically provides for recording or filing a copy. 76 C.J.S. Records § 10 (1994), 66 Am. Jur. 2d, Records and Recording Laws, § 128 (1973). See generally Bates v. Bates, 24 So.2d 440 (Ala. 1946) (no legal authority to register a copy of a deed except for statute allowing copies certified by public officials); Northern Pacific Ry. Co. v. Advance Realty Co., 78 N.W.2d 705, 712 (N.D. 1956) ("It is not only the deposit of the original instrument but the correct record thereof that constitutes constructive notice."). Two chapters of the North Dakota Century Code specifically relate to the recording of documents in the office of the register of deeds. N.D.C.C. ch. 11-18 governs the register of deeds and specifies the duties of the register of deeds in recording documents. N.D.C.C. ch. 47-19 specifies the documents entitled to be recorded and specifies the requirements for recording documents in the register of deeds' office.

In a 1990 letter opinion, this office concluded that the register of deeds did not have authority to record a faxed power of attorney, citing N.D.C.C. §§ 11-18-05, 11-18-15, 47-19-03, and 47-19-29. The opinion stated: "No language in these statutes authorizes a register of deeds to record faxed or copied documents." Letter from Attorney General Nicholas J. Spaeth to James W. Wold (Sept. 27, 1990).

Copies of specific types of documents, however, are authorized by statute to be recorded by the county register of deeds. See, e.g., N.D.C.C. §§ 28-24-03 (a duplicate of the written notice of redemption shall be recorded in the office of the register of deeds); 28-25-13 (a certified copy of the court order for the appointment of a receiver must be recorded in the office of the register of deeds); 30.1-10-01(2)(d) (a copy of a disclaimer of interest in real property may be recorded in the office of the register of deeds); 38-18.1-06

Mr. Jerry Renner
November 13, 1996
Page 2

(a copy of the notice of lapse of mineral interest must be recorded in the office of the register of deeds); 40-51.2-07 (a copy of the resolution, certified by the executive officer of the municipality must be filed and recorded with the county register of deeds); 41-09-41(1) ("A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.") It is a principle of statutory construction that the mention of one thing implies the exclusion of another. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). The fact that the Legislature specified that a copy of a record could be filed in several specific instances implies that the original record must be filed in all other instances.

Based on the foregoing, it is my opinion that unless a statute specifically authorizes the filing or recording of a copy, the document to be filed must contain original signatures and, if required to be acknowledged, an original acknowledgment. See N.D.C.C. § 11-18-15 (notary seal or documents filed with register of deeds may be stamped or imprinted).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

bab/pg

ALVIN A. JAEGER
SECRETARY OF STATE



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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 12, 2001

TO: Senator Traynor and Members – Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1252 – Original Signatures required for notarizing and recording

The introduction of this bill has been a cooperative effort between the Secretary of State's office and the North Dakota Register of Deeds Association. Its intent is to clarify state laws pertaining to notarization and recording as well as to establish in law an Attorney General's opinion (copy attached) related to the recording of documents with original signatures.

Section 1 of the bill makes it a prohibited act for a notary to notarize a signature on a document, which is not an original signature. For example, a notary could not notarize a signature that has been affixed to a document by the means of a rubber stamp. In those cases where the executor of a document is unable to affix a signature because of an inability to write, the notary is not prevented from notarizing an original mark, such as an X, as long as it is original. This is already permissible under current law.

The prohibited acts, which are currently in state law, are listed in the following section of law.

44-06-13.1. Prohibited acts - Penalty.

A notary public may not notarize a signature on a document if:

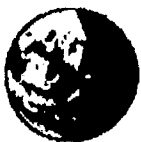
1. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. The notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized. A notary public who violates this section is guilty of an infraction and the notary public's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

Please note the language in line 9, which states "except as otherwise provided by law." This wording has been included in the text so that the change in Section 1 is not in conflict with any other existing or future laws related to notarization. As an example, this modifier would relate to any laws regarding notarization, which may be enacted pertaining to electronic signatures.

Section 2 of the bill amends a section of law in Chapter 47-19. That is the chapter that pertains to the recording of documents and includes the guidelines that County Register of Deeds must follow. Lines 1 through 3 on page 2 clarify the pre-requisites found in 47-19-03 by stating that only instruments having original signatures can be accepted for recording.

This text also includes the modifier, "except as otherwise provided by law" for the same reasons as stated for the text in Section 1. Because of some concerns expressed in testimony before the House Judiciary Committee, the House amended Section 2 by adding the words "or the law of the state in which the instrument or document was executed."

The Secretary of State's office is in support of the First Engrossment and urges a Do Pass.



"Pamela Tamayo
Stenehjem"
<pstenehj@state.nd.us>
s>

03/09/2001 06:46 PM

To: "Sen. John T. Traynor" <jtraynor@state.nd.us>, "Sen. Darlene Watne" <dwatne@state.nd.us>, "Sen. Carolyn Nelson" <cnelson@state.nd.us>, "Sen. Dennis Bercier" <dbercier@state.nd.us>, "Sen. Dick Dever" <ddever@state.nd.us>, "Sen. Stanley W. Lyson" <slyson@state.nd.us>, "Sen. Tom Trenbeath" <ttrenbea@state.nd.us>
cc: "Sen. Randy A. Schobinger" <rschobin@state.nd.us>, "Sen. Randal Christmann" <rchristm@state.nd.us>, "Sen. Duane C. Espgaard" <despegar@state.nd.us>, "Sen. Rich Wardner" <rwardner@state.nd.us>, "Sen. Bob Stenehjem" <bstenehj@state.nd.us>, "Sen. Aaron Krauter" <akrauter@state.nd.us>
Subject: HB 1252

Chairman Traynor, Vice-Chairman Watne and Members of the Senate Judiciary Committee:

My name is Pamela Tamayo Stenehjem. I am the Dunn County Register of Deeds/ex-officio Clerk of Court and I testified before the House Judiciary Committee on January 22, 2001, on behalf of the Registers of Deeds Association.

On Monday, March 12 @ 10:30 A.M. you will be hearing testimony on HB 1252. I kindly ask that I may take this opportunity to explain the concerns as a county recorder and the purpose of HB 1252.

The first and foremost reason for the recording side of this bill was to address the use of a signature stamp on a legal "paper" document presented for recording. There is nothing presently in the statutes relative to recording, that addresses "signature stamps". For this reason, I obtained an opinion from my state's attorney in which he stated that I cannot record a document executed with a signature stamp, nor can I as a register of deeds acknowledge a signature stamp. (A register of deeds is authorized by 44-05-01 NDCC to administer oaths.) The registers of deeds presently are relying on an Attorney General's opinion that was issued November 13, 1996, in response to a letter from the Kidder County State's Attorney. Although the issue was whether a "copy" of a document could be recorded, the last paragraph in the opinion includes a statement regarding original signatures:

"Based upon the foregoing, it is my opinion that unless a statute specifically authorizes the filing or recording of a copy, the document to be filed must contain original signatures and, if required to be acknowledged, an original acknowledgment."

As a recorder, I can tell you that 95% of the rejected documents are caused by incomplete acknowledgments. The notary public in executing the acknowledgment has failed to comply with the laws of the state governing acknowledgments. Therein, lies the concern. There are one too many notaries who are not performing the required duties set out by statute as evidenced by the rejections exercised by the recorders' offices in North Dakota.

The ND Secretary of State, through its publication *Notary Notes* which is sent to all North Dakota notaries and registers of deeds, is diligently informing ND notaries of the do's and do not's, however, I continue to receive documents with incomplete acknowledgments executed by North Dakota notaries. If a notary public (whose prescribed duties are meant to preserve the integrity of a legal document against possible fraud) is not following today's laws when acknowledging "original" handwritten signatures; then the use of "signature stamps" should be cause for concern.

North Dakota has always taken the conservative approach to protecting that which is important. The register of deeds office, remember, is where the deed to your home/property/minerals, is recorded; it is where the mortgage to your home is recorded (which you had to sign and have acknowledged as proof that you are in agreement to the terms and conditions set forth by the lender); it is where a lien against property is recorded (which doesn't need your signature, instead it is signed and acknowledged by only the claimant). The register of deeds office is where anything can be recorded against a tract of land (including your's) as long as it meets the North Dakota recording requirements. Requiring a document to be executed with an original signature connotes an important safety measure.

If a signature stamp were allowed, what additional steps would be required of the notary to prove the signature stamp represents the actual signature of the party appearing before the notary? Logically, the party appearing before the notary would have to "write" his/her name as proof. If the party has to "write" his/her name to show proof, it would have been much simpler to just "write" his/her name on the paper document. Presently, there is nothing in the statutes that govern the acknowledgment of a signature stamp.

HB 1252 requires an original signature of the party executing a paper document presented for recording.

HB 1252 requires an original signature of the notary public on the acknowledgment.

HB 1252 will put into statute the merits of the Attorney General's Opinion (11/13/1996).

HB 1252, as amended, makes an exception for the law of the state where the instrument or document was executed.

Most importantly, HB 1252 will maintain the integrity of a paper document presented for recording.

The Registers of Deeds, along with the Secretary of State, are asking for your support on HB 1252.

I thank you for your time in considering HB 1252.