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DESCRIPTION

1379

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Deanna Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE JUDICIARY

HB 1379

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10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1379

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
1		x	9.3-15
2		xx	10.7-13
Committee Clerk Signature			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1379.

Rep. Klemin: Introduced the bill (see attached testimony).

Rep. Kretschmar: Could you accomplish this by amending the security interest to be filed in the state where the real estate is located as well as state of the debtor.

Rep. Klemin: That's possibly correct, although it was deemed more appropriate to put the exception in the general provisions that refer to the real estate laws.

Chairman DeKrey: Thank you.

Christine Hogan, Exec. Dir. of State Bar Association of ND: Support, HB ¹³⁷⁹~~1362~~ came out of a task force.

Chairman DeKrey: Thank you. Any further testimony in support? Any testimony in opposition? If not, we will close the hearing.

(Reopened later in the same session. Rep. Wrangham and Rep. Onstad absent)

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1379
Hearing Date 2-10-03

Chairman DeKrey: What are the committee's wishes in regard to HB 1379.

Rep. Kretschmar: I move a Do Pass.

Rep. Maragos: Seconded.

11 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Klemin

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10/3/03
Date

Date: 2/10/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1379

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Kretschmar Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Klemin

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

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Dan Hall
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 10, 2003 1:31 p.m.

Module No: HR-25-2126
Carrier: Klemm
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1379: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1379 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-25-2126

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Dennis Hall
Operator's Signature

10/3/03
Date

2003 SENATE JUDICIARY

HB 1379

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10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1379

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/26/03

Tape Number	Side A	Side B	Meter #
2	X		.01 - 5.0
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Senator Stanley W. Lyson, Vice Chairman, called the meeting to order. Roll call was taken and not all committee members present. Senator Lyson, Vice Chairman requested meeting starts with testimony on the bill:

Testimony Support of HB 1379

Sen. Larry Klemin- (meter 0.5) Introduced bill Read Attachment #1a, and submitted example of a record change that it mirrors Attachment #1b. This bill is basically a technical correction that legislative council said held to much context to consider it a clerical change. When this bill had its major overhaul by the National Commission of Uniform State Laws last session this technical change was missed and we are here to update it.

Marilyn Foss - ND Bankers Association. (meter 4.5) In support of this bill. This bill is a gap filler.

Testimony in opposition of HB 1379

None

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Dennis Hallworth
Operator's Signature

10/3/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1379
Hearing Date 02/26/03

Testimony Neutral to HB 1379

None

**Motion Made to DO PASS HB 1379 by Senator Thomas L. Trenbeath and seconded by
Senator Dick Dever**

Roll Call Vote: 4 Yes. 0 No. 2 Absent

Motion Passed

Floor Assignment: Sen. Dever

Senator Stanley W. Lyson, Vice Chairman closed the hearing

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Deanna Halliwell
Operator's Signature

10/3/03
Date

Date: February 26, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. **HB 1379**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By SEN. TRENBEATH Seconded By SEN. DEVER

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	A	A	Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FOUR (4) No ZERO (0)

Absent TWO (2)

Floor Assignment SEN. DEVER

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Dennis Bercier
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 12:33 p.m.

Module No: SR-34-3505
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1379: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1379 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-34-3505

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Dennis Halliwell
Operator's Signature

10/3/03
Date

2003 TESTIMONY

HB 1379

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10/3/03
Date

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
HOUSE BILL NO. 1379
FEBRUARY 10, 2003**

In the 2001 Legislative Session, the Legislature adopted extensive revisions to Article 9 of the Uniform Commercial Code (UCC), which governs secured transactions. These revisions were codified in Chapter 41-09 of the North Dakota Century Code. After the end of the 2001 Session, a UCC working group was organized as a committee of the State Bar Association of North Dakota to address additional issues in Article 9. I served on that committee, along with representatives from state and local government, including the offices of the Secretary of State and the Attorney General, County Recorders, and representatives of banking and other lending organizations.

House Bill 1379 addresses an issue that has arisen since 2001. This bill provides that the real estate statutes prevail over related provisions in the Uniform Commercial Code. These are technical amendments to clarify where a creditor must give notice in order to gain priority over other creditors with respect to interests in real estate.

To secure a loan under the Uniform Commercial Code, a person can give a creditor a security interest in the right to payments (also known as proceeds) from real estate instruments, such as a mortgage or a contract for deed. The UCC now provides that in order to "perfect" the security interest and thus gain

priority over other creditors, the secured party can file a financing statement in the State of the debtor's residence, which may not be North Dakota. The debtor in this case is the lender on a mortgage or the seller in a contract for deed. Therefore, the State of residence of the lender-debtor or the seller-debtor determines where other potential creditors of this debtor are to search to see if any other creditor claims a security interest in the payments and the accompanying control of the real estate lien that supports the promise to pay.

Since statehood, North Dakota law has provided that persons dealing with real estate are entitled to rely upon the real estate records in determining who is the owner of a real estate interest or a mortgage holder. Section 47-19-41 is the section of North Dakota real estate law which provides that the first person to record a real estate instrument has priority and that recording is notice to all other persons. A copy of Section 47-19-41 is attached. This is a "race - notice" statute, meaning that the person who wins the race to the courthouse has priority and the recording is notice to other persons.

The purpose of this bill is to ensure that persons dealing with real estate will be able to continue to rely on the real estate records in North Dakota and will not have to search the UCC personal property records of another State where the debtor-lender or the debtor-seller may reside in order to determine who controls the payments received from a mortgage or contract for deed in this State.

Section 1 of this bill amends UCC Section 41-09-09, which is the "scope" section of the UCC and which states the general circumstances under which the

UCC provisions apply or don't apply. Section 2 of this bill amends UCC section 41-09-11, which covers the general effectiveness of a security agreement.

Section 3 of this bill amends UCC Section 41-09-13, which governs the general enforceability of a security interest in proceeds. All of these sections are amended by this bill to provide that Section 47-19-41 of the real estate recording law controls for purposes of notice and priority. A creditor will need to record an instrument in the North Dakota real estate records in order to give notice to other potential creditors of a claim to the right to the receipt of the payments.

I urge you to recommend a "do pass" on House Bill 1379. I would be happy to answer any questions that you may have.

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10/3/03
Date

47-19-41. Effect of not recording - Priority of first record - Constructive notice - Limitation and validation.

Every conveyance of real estate not recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part or portion thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release, of the form in common use or otherwise, first is deposited with the proper officer for record and subsequently recorded, whether entitled to record or not, or as against an attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance. The fact that such first deposited and recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of quitclaim and release aforesaid, shall not affect the question of good faith of the subsequent purchaser, or be of itself notice to the subsequent purchaser of any unrecorded conveyance of the same real estate or any part thereof. This section shall be legal notice to all who claim under unrecorded instruments that prior recording of later instruments not entitled to be recorded may nullify their right, title, interest, or lien, to, in, or upon affected real property. No action affecting any right, title, interest, or lien, to, in, or upon real property shall be commenced or maintained or defense or counterclaim asserted or recognized in court on the ground that a recorded instrument was not entitled to be recorded. The record of all instruments whether or not the same were entitled to be recorded shall be deemed valid and sufficient as the legal record thereof.

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Donna Hall Smith
Operator's Signature

10/3/03
Date

Att # 1a 2/26

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SENATE JUDICIARY COMMITTEE
HOUSE BILL NO. 1379
FEBRUARY 26, 2003**

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A# # 1b.

2/26

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