

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1188

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1188

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1188

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-12-05

Tape Number	Side A	Side B	Meter #
2	x		13.0-48.7
2		x	12.4-27.9

Committee Clerk Signature

Minutes:

Chairman Keiser: Opened the hearing on HB 1188. All committee members were present.

Representative Dave Weiler: Appeared in support of bill and also was a sponsor.

Claus Lemke, Executive VP ND. Association of REALTORS: Appeared in support of HB 1188 and provided written testimony (SEE ATTACHED TESTIMONY).

Mary Spical, appeared on behalf of Steve Lunde (Realtor, Max Realty, Fargo, ND):

Appeared in support of HB 1188 and provided written testimony. (SEE ATTACHED TESTIMONY).

Representative Keiser: Can you explain breach of duty as it applies to Realtors a little better for us?

Claus Lemke: Basically, by state law the Realtors have a fiduciary responsibility with whom

they work, if they work for the buyer they have a certain fiduciary obligation of honesty

truthfulness, full service, full disclosure, things to the buyer, if they work for the seller they have

the same obligations its called fiduciary relationship, and there is a number of things they have to do. They must be honest to all parties in the transaction. there primary fiduciary obligations belongs to their client and must define it. The duty would be that you have an obligation that you do disclose that, whether your the seller or the buyer.

Chairman Keiser: What your proposing is that the buyer/seller has 2 years to discover all these problems and after that they have to have some responsibility within that 2 year period.

Claus Lemke: That is correct.

Representative Amerman: Right now you have a 6 year statute of limitation, that is correct.

Vicki Roller appeared on behalf of Scott Louser, (Realtor, Prudential Preferred properties,

Minot): Appeared in support of HB 1188 and provided testimony (SEE ATTACHED TESTIMONY). We would like it 2 years, because there should be some sort of limitation, memories fade and it gets difficult to maintain records, its human error in some parts.

Kerry Carpenter, Realtor/Owner, Oaktree Realtor Bismarck: Appeared in support of HB 1188 and provided written testimony (SEE ATTACHED TESTIMONY).

Chairman Keiser: Its not really 2 years exposure, its 2 years after a reasonable person would become aware of the problem, that could be a potential problem, because what we have to worry about is what's reasonable. I could discover something 3 years from now that would concern m and if I initiated action I would have a 2 year period of exposure to the Realtor.

Kerry Carpenter: If a real estate licensee is sued they can raise this defense basically what they are going to do is move for summary judgment and say this action should be dismissed because its limited by the statute of limitations and there fore its beyond the time it should be dismissed.

Chairman Keiser: In the case of fraud, where there is intention to fraud, the statute of limitations that is a separate section of the code. There really isn't a limitation there, it could be 25 years down the road when you go to sell your house and somebody else recognizes that something was down to that house, and the Realtor knew about it, and should have told you about it and did not they could be included in the lawsuit with the previous owner. What are the statute of limitations to the home seller that does not disclose something?

Kerry Carpenter: That would fall under the 6 year statute, unless there is fraud.

Chairman Keiser: If they signed the agreement, that says I'm disclosing everything that happened to the house?

Kerry Carpenter: I would certainly allege fraud in that, then it is beyond that.

Representative Ruby: I move a DO PASS on HB 1188.

Representative Froseth: SECOND the motion.

Motion carried. VOTE: 12-YES 2-NO 0-Absent

Representative Dietrich will carry the bill on the floor.

Roll Call Vote #: Date: 1-12-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1188

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do PASS

Motion Made By

Rep. Ruby

Seconded By

Rep. Froseth

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	x		Rep. B. Amerman	x	
N. Johnson-Vice Chairman	x		Rep. T. Boe	x	
Rep. D. Clark	x		Rep. M. Ekstrom		x
Rep. D. Dietrich	x		Rep. E. Thorpe		x
Rep. M. Dosch	x				
Rep. G. Froseth	x				
Rep. J. Kasper	x				
Rep. D. Nottestad	x				
Rep. D. Ruby	x				
Rep. D. Vigesaa	x				

Total (Yes)

12

No

2

Absent

0

Floor Assignment

Rep. Dietrich

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

REPORT OF STANDING COMMITTEE (410)
January 12, 2005 2:48 p.m.

Module No: HR-07-0364
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1188: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
HB 1188 was placed on the Eleventh order on the calendar.

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1188

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1188**

Senate Industry, Business and Labor

☐ Conference Committee

Hearing Date February 14, 2005

Tape Number	Side A	Side B	Meter #
1		x	1086-end
2	x		0-650

Committee Clerk Signature



Senator Klein opens hearing on **HB 1188**

(meter #1086, tape 1, side B)

Representative Dave Weiler - Sponsor of this bill - Deals with a 2 year statute of limitations.

He said currently they were not listed anywhere therefore they fall under the six year statute of limitations.

Tate Cymbaluk - Political Chair for ND Association of Realtors - He then gave a brief overview of the bill.

Senator Klein - Asked if there is a problem with people coming back with a problem in 6 years.

Cymbaluk - Said no, but he can't speak for others.

Senator Espegard - Asked what benefit this has for ND.

Cymbaluk - Refers that question to later in the discussion.

Scott Lauser - President of the ND Association of Realtors - See written testimony.

(meter #1370)

Senator Heitkamp - Asked what statute of limitations other states have.

Lauser - Answered that S.D. is 3 years.

Senator Heitkamp - Wanted to know why 2 years.

Lauser - Said there will be testimony to that.

Senator Espegard - Asked if Realtors carry Error's and Omissions Insurance.

Lauser - Said yes, it is mandated by law 2 years ago.

Senator Krebsbach - Asked how much coverage.

Lauser - replied \$500,000

Senator Espegard - Says he has trouble with the 2 years and the benefit to the people of ND.

Lauser - They were told by their insurance provider that this would help in their premium.

As far as the 2 yrs. limitation it is somewhat similar to other industries.

Kerry Carpenter - Past President of Bismarck Board of Realtors - See written testimony. He explained when the statute of limitations starts, usually at the time of closing. He also explained the 2 year time frame.

Senator Espegard - He said most of the time he has seen problems with real estate transactions it will show up at the next transaction. He said a lot of times that is longer than 2 years. He said the problem here looks like the premium.

Senator Nething - Thinks there has been some real strides in trying to develop regulated education requirements, your ethics requirements, would this impact your insurance premium.

Kerry - Said, exactly. Someday they may come back and say they can't provide the coverage.

Senator Espegard - Said to take \$125 out and let the market bare it.

(meter #2863)

Senator Krebsbach - Asked if regardless of exposure if everyone is paying \$125.

Carpenter - Yes within the mandatory program.

Senator Klein - Asked if there a lot of members that are in a bind going to court on issues.

Carpenter- Said, not a lot.

Senator Espegard - Thinks that 2 years is a little short for problems to come up.

Carpenter- Said cases very if it gets into fraud. There usually some kind of track record.

Senator Espegard - Wants to know how this helps the people of ND.

Carpenter - Replied, with disclosure and having a professional available to them.

Senator Espegard - Thinks it would help people more if it were a longer time period.

Carpenter - Respectfully disagrees.

Senator Heitkamp - Asked if they had the liability insurance right now.

Carpenter - Said yes.

Senator Heitkamp - Thinks your taking away 4 years you could fix it. It wants someone to tell him when the problems come up, 4 years, 5 years.

Carpenter - Said people should be able to figure out problems in 2 years.

Senator Heitkamp - Asks if there isn't a problem why are we fixing it.

Carpenter - Said they want to keep insurance at a reasonable cost.

(meter #4225)

Senator Espegard - Wants to know what other business has a 2 year statute of limitations.

Senator Krebsbach - Asked if the standards were the same for commercial and residential real estate.

Carpenter - Replied, none.

Steve Lunde - President Elect of the Fargo Board of Realtors - See written testimony.

Senator Espegard - Asked if his company carries E & O in addition to what the state covers.

Lunde - Said they pay more, \$30 per transaction, part of the franchise plan.

Senator Espegard - Asked how many people use the state program.

Lunde - Not sure.

Senator Krebsbach - Asked if his company is limited to \$125 or is it greater.

Lunde - He said he was not sure.

Senator Klein - Asked what is going to hold them liable.

Lunde - He feels as Realtors they try to keep problems to a minimum. They want to make sure their dealing are the right thing for their clients.

(meter #5068)

Claus Lembke - He said the problem is the fiduciary agency responsibility that they have to their clients. Once the transaction is closed the fiduciary responsibility ends unless there is information that is confidential to the seller or to the buyer. The smaller community Realtor would be hurt if the insurance went over \$125.

Senator Espegard - Gave a scenario of a possible problem.

Lembke - Said there are others involved, surveyor, inspectors etc.

Senator Espegard - Asked what liability could a Realtor have.

Lembke - Replied a breach of duty on agency. He gave some examples.

Senator Heitkamp- Said his problem with this bill is that you can not show him one example of someone who has had a problem with someone coming 5 or 6 years after the sale.

Senator Nething - Asked if these questions had not come up in the House.

Lembke - Questions were raised and were answered to the best of their ability.

(Meter #6236, end of tape 1, side B)

(Tape 2, side A)

Randy Schwartz - Fargo Realtor - Said he is the example that Senator Heitkamp is looking for. He was sued by a purchaser of a new home 5 years after it closed. He handled the sale only, did not do the title work, did not build it, did not survey it, but he was sued.

Senator Heitkamp - Asked if the expense incurred when the lawsuit was thrown out was his, or his companies or insurance.

Schwartz- Replied, it was less than his deductible but still paid a couple thousand dollars out of his pocket.

Senator Fairfield - Asked if it was the same result whether it be 2 years or 5 years.,

Senator Espgaard - Asked once again how does it help the people of ND.

Schwartz - If the insurance goes up you will have 800 people dropping off from any coverage at all.

Senator Nething - Asked about his lawsuit.

Schwartz - Described the lawsuit.

Senator Nething - Asked Claus Lembke if he prioritizes his legislation.

Lembke - Replied they do not .

(meter #650) End of hearing.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1188

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-01-05

Tape Number

3

Side A

xxx

Side B

Meter #

45-340

Committee Clerk Signature



Minutes: **Chairman Mutch** allowed committee discussion on HB 1188. All Senators were present. HB 1188 relates to a two-year statute of limitations for an action resulting from a breach of duty with respect to a real estate transaction.

Senator Klein presented the committee with amendments.

Senator Klein: The amendments changes it from two years to four years.

Senator Klein moved to adopt the amendments.

Senator Heitkamp seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Senator Heitkamp moved to adopt as amended.

Senator Klein seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Carrier: Senator Klein.

March 1, 2005

Senate Amendments to HB 1188 - Industry, Business and Labor Committee 03/01/2005

Page 1, line 1, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 2, replace "two-year" with "four-year"

Page 1, line 5, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 6, after the colon insert:

"Action having four-year limitation."

Page 1, line 8, after "transaction" insert "must be commenced within four years after the claim
for relief has accrued"

Renumber accordingly

Date: 3-1-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1188

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Amend

Motion Made By Klein

Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	X	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 7

No 0

Absent 0

Floor Assignment

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

Date: 3-1-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1188

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DPAM

Motion Made By

Heitkamp

Seconded By

Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield		X
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes)

6

No

1

Absent

0

Floor Assignment

Klein

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

REPORT OF STANDING COMMITTEE

HB 1188: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1188 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 2, replace "two-year" with "four-year"

Page 1, line 5, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 6, after the colon insert:

"Action having four-year limitation."

Page 1, line 8, after "transaction" insert "must be commenced within four years after the claim for relief has accrued"

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1188

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1188

House Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 3-30-05

Tape Number

1

Side A

x

Side B

Meter #

23.5-35.8

Committee Clerk Signature



Minutes:

Chairman Dietrich: Opened the conference committee on HB 1188.

Chairman Dietrich, Representative Clark, Representative Thorpe, Chairman Klein, Senator Krebsbach, Senator Fairfield were present.

Chairman Dietrich: HB1188 pertains to 2 year statute of limitations for Realtors. It was passed by the House, and sent to the Senate and they added a few amendments, there for we have a bill coming back with a 4 year statute.

Chairman Klein: Explain that, we got it at 2 years, we knew we were going from 6-2 years, that caused a little heart burn about that big of a drastic approach I think in trying to get the thing moving, we (See attached testimony.) on it a week or 2 and I just had something drafted that said 4 years, it passed readily at 4, I'm certainly here to discuss whether that is the right number or not but in our committee it went right through the committee. I think 2 would be a little short, may be 3 years could be a compromise.

Senator Fairfield: I like 4, I thought it is was a good compromise.

Senator Krebsbach: I would be quite agreeable to go to the 3, to me it offers a compromise between the House and the Senate, it gives the real-estate people half of where they are at this time, and if the committee is ready I would like to make a motion.

Senator Klein: We are not letting the Realtors off of the hook, we are just saying there are some issues that they didn't abide by, this isn't if the house is cracked or leaking or the home inspector didn't do his job, this is something that Realtors do, if you get out there quite a few years and then your going to go back and find somebody that is going to say oh, yea, I remember that, that is difficult that is why 6 is way to long, but 3 might be certainly OK, its not what the house was like it is what the Realtor does, and that to me provided some comfort.

Senator Krebsbach: I would make a **MOTION** that the **SENATE RECEDE** from its amendments and HB 1188 adopt amendments of changing from 4 years to 3 years.

Senator Klein: I **SECOND** the motion on HB 1188.

Motion carried VOTE: 6-YES 0-NO 0-ABSENT.

Representative Dietrich will carry the bill on the floor.

**House Amendments to HB 1188 (50385.0102) - Industry, Business and Labor
Committee 03/31/2005**

That the Senate recede from its amendments as printed on page 985 of the House Journal and page 738 of the Senate Journal and that House Bill No. 1188 be amended as follows:

Page 1, line 1, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 2, replace "two-year" with "three-year"

Page 1, line 5, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 6, after the colon insert:

"Action having three-year limitation."

Page 1, line 8, after "transaction" insert "must be commenced within three years after the claim for relief has accrued"

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1188

(, as (re)engrossed):

Date: 3-30-04

Your Conference Committee

IBL

For the Senate:

YES / NO

For the House:

YES / NO

Chairman Klein P

X

Chairman Dietrich P

X

Senator Krebsbach P

X

Rep. Clark P

X

Senator Fairfield P

X

Rep. Thorpe P

X

recommends that the ~~(SENATE/HOUSE)~~ (ACCEDE to) ~~(RECEDE)~~ from)

the ~~(Senate/House)~~ amendments on (SJ/HJ) page(s) 985 --

_____, and place _____ on the Seventh order.

X, adopt (further) amendments as follows, and place 1188 on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) 1188 was placed on the Seventh order of business on the calendar.

DATE: 3-30-05

CARRIER: Representative Dietrich

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Senator Krebsbach

SECONDED BY: Senator Klein

VOTE COUNT 6 YES -- NO -- ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1188: Your conference committee (Sens. Klein, Krebsbach, Fairfield and Reps. Dietrich, Clark, Thorpe) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 985, adopt amendments as follows, and place HB 1188 on the Seventh order:

That the Senate recede from its amendments as printed on page 985 of the House Journal and page 738 of the Senate Journal and that House Bill No. 1188 be amended as follows:

Page 1, line 1, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 2, replace "two-year" with "three-year"

Page 1, line 5, remove "subsection to" and replace "28-01-18" with "to chapter 28-01"

Page 1, line 6, after the colon insert:

"Action having three-year limitation."

Page 1, line 8, after "transaction" insert "must be commenced within three years after the claim for relief has accrued"

Renumber accordingly

HB 1188 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1188

Claus@ndrealtors.com

From: Cindy Rice Grissom [cgrissom@risceo.com]
Sent: Friday, December 10, 2004 4:32 PM
To: claus@ndrealtors.com
Subject: RE: ND law change

Hi Claus. We are pleased to hear from you. Thanks for the update regarding the proposed legislation.

From the insurance company's standpoint, this legislation would be helpful to keep the cost of insurance down. This legislation would (1) limit the liability of the real estate licensee and (2) help the insurance provider in its evaluation regarding adequate pricing by establishing a limited of years for the action to be made against a real estate licensee.

Imposing a limit to the number of years that an action may be brought against a real estate licensee would reduce the liability level for prior acts. This would be looked at positively by the insurance provider when pricing for future years premium.

It is often difficult to defend a claim involving a transaction from many years past when evidence is difficult to locate, witnesses and parties are hard to find and memories have faded. It is often difficult to locate contracts and files that have been archived or possibly even destroyed after a number of years. The limitation would help eliminate claims that are "stale" and cannot be accurately evaluated because of lack of current evidence. The limitation would require plaintiffs and their attorneys to properly and timely identify alleged errors and hopefully lead to timely resolution of problems.

As you know, active real estate licensees are required to carry errors and omissions insurance. It is more likely that licensees will still be active and insured 2 years after the transaction, rather than 6 years later. Therefore, it is more likely that there will be insurance available to provide coverage for an error or omission involving real estate professional services if the suit is brought within 2 years of the transaction.

These are some of the reasons that we would be in favor of such a bill.

Please let us know if you would like any additional information or further explanation. We appreciate the opportunity to provide comment.

Thanks!

Cindy

Cindy Rice Grissom
Chief Executive Officer
Rice Insurance Services Company, LLC
4211 Norbourne Boulevard
Louisville KY 40207

phone: 502-897-1876 (ext. 8)
toll free: 800-637-7319
fax: 502-897-7174

1/11/2005



North Dakota Association of REALTORS®

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January 12, 2005

Testimony on HB 1188

To: House IBL Committee

From: Claus Lembke, Executive Vice President
North Dakota Association of REALTORS® (NDAR)

Chairman Keiser and members of the Committee:

My name is Claus Lembke. I represent the North Dakota Association of REALTORS® (NDAR). We are a state-wide Trade Association with over 1200 members represented by eight local boards of REALTORS®.

We appreciate the opportunity to have HB 1188 heard before your committee.

We appreciate Representative Weiler and co-sponsor Representatives Carlson, Dietrich, Potter and Wieland and Senator Judy Lee for introducing this bill on our behalf. There are several reasons why we are asking you to pass this bill. I would like to address a couple points and with your permission Mr. Chairman, I'd like to introduce three REALTORS® to explain more specifics.

During a meeting with the South Dakota Association of REALTORS®, we learned that the South Dakota Legislature reduced the statute of limitations for real estate licensees in 2004. Our leadership looked at our laws in North Dakota and found several professions such as doctors and attorneys with a shorter term in the statute of limitations. We looked at ourselves and how we develop ourselves as professional real estate practitioners compatible to the high standards like the medical or legal professionals.

We adhere to a high standard of practice through our Code of Ethics and defined strict state laws on agency and responsibilities. We pride ourselves on our high standard of continuing education and every licensee must carry Errors & Omissions insurance to be able to practice in our profession.

Mr. Chairman, I'd like to ask Steve Lunde from Re/Max Realty One in Fargo, Scott Louser of Prudential Preferred Properties in Minot, and Kerry Carpenter, a broker/owner of Oaktree REALTORS® in Bismarck, to provide further testimony in favor of this bill. Kerry Carpenter is also a practicing attorney.



North Dakota Association of REALTORS®

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2004-2005

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Jim Deibert, GRI
Randy Schwartz

Grand Forks:

Skip Greenberg, ABR, CRB, CRS, GRI
Shawn Horn, CRS, GRI

Jamestown:

Scot Nething

Minot:

Norma Oppert, GRI
Gary Olson, GRI

Williston:

Arlene Hickel, CRS, GRI

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Moni Krantz



January 12, 2005

Testimony on HB 1188

To: House IBL Committee

From: Steve Lunde, REALTOR®
Re/Max Realty 1, Fargo, ND
North Dakota Association of REALTORS® (NDAR)

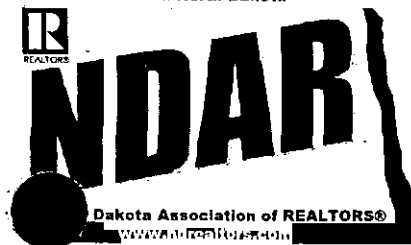
Chairman Keiser and Members of the House IBL committee:

My name is Steve Lunde of Re/Max Realty 1 of Fargo ND. I am the President Elect of the Fargo Moorhead Area Association of REALTORS®. Our Board has over 500 REALTOR® members. I am also a member of the Political Affairs committee and a Director of the Board of the ND Association of REALTORS®.

Our Executive Vice President Claus Lembke contacted the North Dakota Bar Association last November to have some interaction and input on our proposal to lower the Statute of Limitations for Real Estate Practitioners. I was then appointed to present this issue to a meeting by the Bar Association in Fargo on December 3, 2004. I was given the opportunity to make a brief presentation during a Continuing Education seminar for attorneys at the Radisson Hotel in Fargo. I talked to them about reducing the Statute of Limitations to 2 years for Real Estate Licensees.

In a break following my presentation I spoke with several Attorneys about our proposal. No one questioned our intent. This meeting and interaction left me with the feeling that there would not be any opposition from this group.

Overall, I feel that the time was well spent and I enjoyed the opportunity to meet with them.



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January 12, 2005

Testimony on HB 1188

To: House IBL Committee

From: Scott Louser, REALTOR®
 Prudential Preferred Properties, Minot, ND
 North Dakota Association of REALTORS® (NDAR)

Chairman Keiser and members of the Committee:

My name is Scott Louser of Prudential Preferred Properties, Minot, ND. I am the current President of the North Dakota Association of REALTORS®, a Past President of the Minot Board of REALTORS®, Past Chair and current member of several local and state committees including the Political Affairs committees.

One of our reasons for seeking this legislation is how this statute of limitations has a positive affect on our Errors & Omissions (E & O) Insurance.

We sent a note to our state-wide E & O insurance carrier and this is what we were told:

- This legislation would be helpful to keep the cost of insurance down and as some of you may know, current law limits the premium for E & O insurance to \$125 annually.
- We were also told that it is often difficult to defend a claim involving a transaction from many years past when evidence is difficult to locate, witnesses and parties are hard to find and memories fade. This limitation would also hopefully lead to a more timely resolution of problems for all parties to the transaction.

Mr. Chairman and members of the House IBL Committee, we ask that you adopt this legislation.





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January 12, 2005

Testimony on HB 1188

To: House IBL Committee

From: Kerry Carpenter, REALTOR®/owner
 Oaktree REALTORS®, Bismarck, ND
 North Dakota Association of REALTORS® (NDAR)

Chairman Keiser and Members of the (IBL) Committee:

My name is Kerry Carpenter and I am a Broker/Owner of Oaktree Realtors here in Bismarck. I am a Past-President of the Bismarck-Mandan Board of Realtors®. Our Board has over 250 Realtor® members. I am also a member of the Political Affairs Committee of the ND Association of Realtors®. I am also a practicing attorney, specializing in Real Estate Contracts and Title work here in Bismarck for nearly 24 years. I obtained my ND Real Estate Broker's license in 1988, and have been a Broker/Owner of Real Estate Companies since 1993.

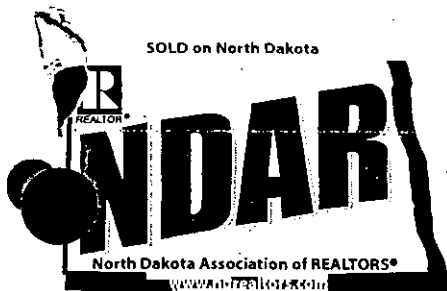
NDCC Section 28-01-16 is our General Statute of Limitations. The general time limit to commence an action after a claim for relief has accrued is 6 years, unless a different time period is specified by our Century Code. This rule applies to claims for what is generally considered "malpractice" by real estate professionals. Without a different specified time limitation, an action accruing today against a real estate licensee falls under this "general" section and leaves matters open for 6 years; or more, depending upon when the claim is determined to have accrued.

North Dakota Law does specify a shorter 2 year time period for "malpractice" actions against the licensed professions of medicine and law. While it doesn't have the same mandatory initial educational requirement for entry to the licensed profession of real estate, I can attest that real estate licensees have very comparable continuing education, professional requirements, and disciplinary processes, to the professions of law and medicine.

The same arguments of lost or destroyed files, faded memories, relocated or deceased witnesses, and exorbitant cost of professional liability insurance, that resulted in a reduced statute of limitations for these other professions are equally applicable to the real estate profession. For these reasons, we are proposing to create a new subsection in HB 1188 to provide the same limitation period for our profession. Our neighboring State of South Dakota saw fit to reduce their statute of limitations for real estate professionals by a passing a similar bill, which was signed into effect on February 25, 2004. Thank you.



SOLD on North Dakota



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The same arguments of lost or destroyed files, faded memories, relocated or deceased witnesses, and exorbitant cost of professional liability insurance, that resulted in a reduced statute of limitations for these other professions are equally applicable to the real estate profession. For these reasons, we are proposing to create a new subsection in HB 1188 to provide the same limitation period for our profession. Our neighboring State of South Dakota saw fit to reduce their statute of limitations for real estate professionals by a passing a similar bill, which was signed into effect on February 25, 2004.

*It is the intent of the proponents of this bill that it be effective to establish a reduced Statute of Limitations not only with regard to actions brought against individual real estate licensees, but also against the licensed company or firm with which the individual licensee is affiliated.

Thank you.

*Note: This is a revised version of the written testimony of Kerry Carpenter that was handed out at today's hearing on HB 1188. It was revised to add the last paragraph (see underlined) in order to make the written testimony match the oral testimony at the hearing

Kerry J. Carpenter, In Favor of HB 1188
January 12, 2005.

28-01-16. Actions having six-year limitations.

The following actions must be commenced within six years after the claim for relief has accrued:

1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of sections 28-01-15 and 41-02-104.
2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
3. An action for trespass upon real property.
4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided.
6. An action for relief on the ground of fraud in all cases both at law and in equity, the claim for relief in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

Source: C. Civ. P. 1877, § 54; R.C. 1895, § 5201; R.C. 1899, § 5201; S.L. 1903, ch. 2, § 1; R.C. 1905, § 6787; C.L. 1913, § 7375; S.L. 1935, ch. 233, § 1; R.C. 1943, § 28-0116; S.L. 1965, ch. 296, § 9; 1977, ch. 279, § 1; 1985, ch. 82, § 49.

Derivation: Wait's (N.Y.) Code, 91; Harston's (Cal.) Practice, 337.

Cross-References. Action by depositor or creditor against bank on account or claim, see §§ 6-08-23, 6-08-24.

Criminal mischief or willful destruction of property by minor, judgment in civil action for damages not subject to statutes of limitation, see § 32-03-09.2.

In General.

Statutes of limitation are designed to prevent the plaintiff's enforcement of stale claims when, through the lapse of time, evidence regarding the claim has become difficult to procure or even lost entirely. *Erickson v. Scotsman, Inc.*, 456 N.W.2d 535 (N.D. 1990).

Accident or Trauma.

When there is a perceptible personal injury caused by an accident or trauma, the statute of limitations starts to run at the time of the injury. *Erickson v. Scotsman, Inc.*, 456 N.W.2d 535 (N.D. 1990).

Where the plaintiff fell in a pool of water, the injury to the plaintiff's ankle by accident or trauma was sufficient to put plaintiff on notice that her rights had been violated and her cause of action accrued at the time of her injury. *Erickson v. Scotsman, Inc.*, 456 N.W.2d 535 (N.D. 1990).

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28-01-17. Actions having three-year limitations - Exceptions.

The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff or coroner upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.

2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.

3. An action for the foreclosure of a mechanic's lien.

Source: C. Civ. P. 1877, § 55; R.C. 1895, § 5202; R.C. 1899, § 5202; R.C. 1905, § 6788; C.L. 1913, § 7376; R.C. 1943, § 28-0117; S.L. 1977, ch. 279, § 2; 1985, ch. 82, § 50; 1989, ch. 161, § 2.

Derivation: Wait's (N.Y.) Code, 92; Harston's (Cal.) Practice, 339.

Cross-References. Political subdivisions, limitation on actions under act governing liability of, see § 32-12.1-10.

Applicability.

This statute of limitation is applicable only to actions premised upon state law and not those arising under 42 U.S.C. § 1983. *Kessel v. Schaff*, 697 F. Supp. 1102 (D.N.D. 1987).

Assault and False-Imprisonment Actions.

The two-year statute of limitation, under section 28-01-18(1), which specifically applies to assault and false-imprisonment actions, falls within the three-year parameter for bringing actions against political subdivisions or sheriffs and constables under section 32-12.1-10 and subsection 1 of this section, respectively. *O'Fallon v. Pollard*, 427 N.W.2d 809 (N.D. 1988).

Civil Action Against Sheriff.

The limitation period for an action against a sheriff for civil liability based on acts performed in an official capacity, including execution sale, is three years. *Lang v. Barrios*, 472 N.W.2d 464 (N.D. 1991).

This section requires that an action against a sheriff based on an act done in his official capacity must be commenced within three years after the claim accrues. *Lang v. Binstock*, 478 N.W.2d 13 (N.D. 1991).

An action against a sheriff and a county for conversion, based on the seizure and removal of plaintiff's belongings in execution of a judgment, accrued when the sheriff seized plaintiff's possessions and placed them with a moving and storage company. *Lang v. Burleigh County Sheriff's Dep't*, 496 N.W.2d 24 (N.D. 1993).

28-01-18. Actions having two-year limitations.

The following actions must be commenced within two years after the claim for relief has accrued:

1. An action for libel, slander, assault, battery, or false imprisonment.
2. An action upon a statute for a forfeiture or penalty to the state.
3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation is subject to the provisions of section 28-01-25.
4. An action for injuries done to the person of another, when death ensues from such injuries, and the claim for relief must be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.
5. An action for recovery of damages arising under chapter 5-01, and the claim for relief is deemed to have accrued at the time of the alleged offense. This limitation does not apply to any claim for relief existing at the time of the enactment of this subsection.

Source: C. Civ. P. 1877, § 56; S.L. 1893, ch. 87, § 1; R.C. 1895, § 5203; R.C. 1899, § 5203; R.C. 1905, § 6789; C.L. 1913, § 7377; R.C. 1943, § 28-0118; S.L. 1969, ch. 292, § 1; 1975, ch. 284, § 1; 1981, ch. 331, § 1; 1985, ch. 82, § 51.

Derivation: Wait's (N.Y.) Code, 93; Harston's (Cal.) Practice, 340.

Cross-References. Political subdivisions, limitation on actions under act governing liability of, see § 32-12.1-10.

Wrongful death actions, see chapter 32-21.

Constitutionality.

The six-year statute of repose set forth in this section relating to medical malpractice actions does not violate equal protection because there is a close correspondence between the statutory classification and the goals of the legislature in adopting the statute. *Hoffner v. Johnson*, 2003 ND 79, 660 N.W.2d 909 (2003).

Accrual of Cause of Action.

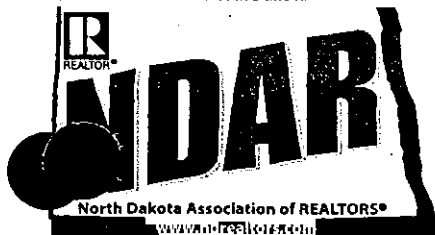
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43-23-06. Definitions. Repealed by S.L. 1977, ch. 405, § 2.

43-23-06.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person who has entered into a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
5. "Dual agency" means a situation in which a real estate brokerage firm, or its licensees, owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
 - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
 - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.
6. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
7. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
8. "Real estate broker", or "broker", means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
 - a. Lists, offers, attempts or agrees to list real estate or any interest therein, or any improvements affixed thereon for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest therein, or any improvements affixed thereon.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest therein, or any improvements affixed thereon.
 - d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest therein, or any improvements affixed thereon.



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February 14, 2005

Testimony on HB 1188

To: Senate IBL Committee

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Re/Max Realty 1, Fargo, ND
North Dakota Association of REALTORS® (NDAR)

Vice Chair Klein and Members of the Senate IBL Committee:

My name is Steve Lunde of Re/Max Realty 1 of Fargo ND. I am the President Elect of the Fargo Moorhead Area Association of REALTORS®. Our Board has over 500 REALTOR® members. I am also a member of the Political Affairs Committee and a Director on the Board of the ND Association of REALTORS®.

Our Executive Vice President Claus Lembke contacted the North Dakota Bar Association last November to have some interaction and input on our proposal to lower the Statute of Limitations for Real Estate Practitioners. I was then appointed to present this issue to a meeting by the Bar Association in Fargo on December 3, 2004. I was given the opportunity to make a brief presentation during a Continuing Education seminar for attorneys at the Radisson Hotel in Fargo. I talked to them about reducing the Statute of Limitations to 2 years for Real Estate Licensees.

In a break following my presentation I spoke with several Attorneys about our proposal. No one questioned our intent. This meeting and interaction left me with the feeling that there would not be any opposition from this group.

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