

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2184

2005 SENATE JUDICIARY

SB 2184

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2184

Senate Judiciary Committee

Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1		X	1081 - end
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: Relating to the satisfaction of a mortgage.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Holmberg - Dis #17 Introduced the bill. This bill is a result of the work of the real property division of the Bar Assoc. One of the segments of the bar have been studying specific issues.

We are constantly making changes in the statute. We are "up dating" this bill.

Malcolm Brown - Probate Attorney in Bismarck, and a member the Titles Standard Committee.

I have a short amendment Att #1. Described bill. This is two new sections to chapter 3503 in the century code. 3503 deals with real-estate mortgages. What this would do is to make it easier to satisfy the mortgage company from the lack of paperwork that a satisfaction that has not been filed Some of the loans have been sold many times and sometimes in that process the company that at one time held the loan is no longer in business.

Sen. Trenbeath asked how many other states have passed this legislation. Mr. Brown responded that the language came from a MN bill. Mr. do you see this not as a problem fixing another problem? The recording at the county recorders office is what will be missing. You can issue a certificate of release. Discussion who would be willing to take the risk of not having the actual title clearance - title company, lawyers, insurance company.

Testimony in Opposition of the Bill:

Greg Tschider - (meter 3200) ND Credit Union League gave testimony, Att #1. I don't think the title insurance obtain any liability in this legislation. We can not give a clear opinion on a title if the assignment has not been recorded.

Jim Schlosser - Bankers Assoc. Stated that not everyone uses title insurance. The original lender needs to make the satisfaction. This bill can open for anyone to defraud a loan and it give instructions on how to do it. This reminds me of the "Savings and Loans" issues. Stated how easy anyone could satisfy a mortgage according to this bill and disappear.

Mr. Horner - Referred to the language on page 2 has to do with electronic mortgages. This is a consumer type of a bill, trying to make it easier for the homeowner to buy a home.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2184

Senate Judiciary Committee

Conference Committee

Hearing Date January 19, 2005

Tape Number	Side A	Side B	Meter #
1	X		2525 -3100
Committee Clerk Signature <i>Marion L Solby</i>			

Minutes: Relating to instruments recorded without auditor's certificate.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The committee opened with the following work:

Sen. Trenbeath stated that (meter 2580) and Sen. Nelson discussed the word age of satisfaction vs satisfactory, on line six. **Sen. Trenbeath** having heard the testimony and having some experience in this area it makes uncomfortable the title insurers by our actions last session are allowed to satisfy mortgages on behalf of the mortgage when they are satisfied the thing has been paid off and this gets vague. We like to see things on paper in "the record". **Sen. Nelson** stated that if she paid someone to do a title search, she would want a complete search, not one with a couple of gaps in it.

Sen. Trenbeath stated that can you imagine if this was the law in ND at the time of the posse comitatus were doing their tricks with the books. They would be satisfying things right and left.

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Senate Judiciary Committee

Bill/Resolution Number SB 2184

Hearing Date January 19, 2005

Sen. Traynor one of the things that I found in a title examination is that if you had a mortgage with out a satisfaction, you would call a bank. They would state that they had given to Mr. ?, If Mr? did not know enough to record it you would go to them to do this.

Sen. Trenbeath stated that there is a statute that requires you to notify a lending institute within a certain about of time. **Senator Triplett** stated that a penalty for not signing a release as an alternative. **Sen. Trenbeath** stated that there is a limit on how much we can punish the assignee of some of the mortgages because they will just quit doing business with the state. **Sen. Traynor** stated that this would be better placed in their **Title Standards**. All agreed

Senator Triplett made the motion to Do Not Pass the bill. **Sen. Trenbeath** seconded the motion. All were in favor.

Carrier: **Senator Hacker**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 1/19/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2184

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen Triplett Seconded By Sen Trenbeath

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hacker

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

REPORT OF STANDING COMMITTEE (410)
January 19, 2005 1:24 p.m.

Module No: SR-12-0706
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2184: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2184 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

SB 2184

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TESTIMONY IN OPPOSITION OF SENATE BILL NO. 2184

GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the Judiciary Committee, I am Greg Tschider and I represent the North Dakota Credit Union League. The North Dakota Credit Union League is requesting that SB2184 not be adopted.

A recorded mortgage may be assigned to any third party. As proof that an assignment has actually occurred, an assignment of the mortgage must be recorded. Thus, when the mortgage is paid off, the third party (holder of the mortgage) must satisfy the mortgage. The purpose of the recorded assignment is to provide the proof necessary for title examination that the real party in interest has been in fact paid.

SB2184 deletes the requirement for the recorded assignment. Therefore, anyone can file a satisfaction of a mortgage with the result that the mortgage is satisfied. SB2184 states that the filing of a satisfaction is prima facie (a fact presumed to be true) evidence of the facts and the County Recorder must record the document. This bill would permit rampant fraud on mortgage holders. If a mortgagor was in financial difficulty, he, she or it could prepare a satisfaction using a fictitious name as the alleged assignee and record the document. The property could then be sold or re-mortgaged, and the criminal could flee the state or the county.

Subsection 3 provides that the recording of a wrongful, erroneous, or unauthorized satisfaction does not relieve the mortgagor of liability. This sounds fine but ignores two very important aspects:

1. The wrongful satisfaction normally will benefit the mortgagor. This would be a case of trying to squeeze blood out of a turnip (criminal).
2. The mortgagee loses its collateral on the loan.

This bill would have a detrimental affect on future real estate lending in North Dakota. Would you grant a loan secured by a mortgage if that mortgage could be satisfied by a bogus satisfaction? Banks, credit unions, and all other lenders will certainly hesitate to real estate lending since their security interest in real estate could be terminated before the mortgage has been paid in full.

An agreement could be made for the fact that someone can now fraudulently prepare documents. However, this bill will inform people that this can be done and how to do it. It is like telling criminals how to perform a crime.

Therefore, it is respectfully requested that this Committee give this bill a "Do Not Pass".

Thank you.