

2009 SENATE JUDICIARY

SB 2236

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2236

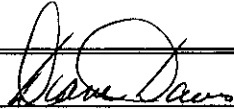
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8015

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the power of a trustee to transfer property

Malcom Brown – On behalf of the Real Property Section of the State Bar Assoc. of ND

See written testimony

Senator Nething – Asks if we have standards that would bring in line what is intended here.

Brown – Responds, right if we have a new law then the standard we would simply reference section 47.10.

Senator Nething – The standard would still read the same.

Brown – The old Century Code reference in that title standard is to chapter 59.....that was repealed. This adds a section to 47.10 which is powers relating to real estate.

Senator Nelson – Understands that somewhere there is a section that still references the repealed section and this new one is suppose to fix that.

Brown – The Uniform Trust Code repealed a specific section in chapter 59, sub #?.. It basicly reads similarly to what is proposed here. Attorneys dealing with real estate like to have more specificity. This proposes a specific amendment to a new section to chapter 47.10 that would specifically state again what the old law stated.

Senator Nelson – Asks if we need this, is vague sometimes better.

Brown – Replies not in regard to real estate.

Senator Nething – Understands the problem to be, if you don't permit the trustee to convey, you don't let that trust have any flexibility.

Brown – In real estate, we like to be as specific as we can.

Close the hearing on 2236

Senator Lyson motioned for do pass, Senator Schneider.

Vote – 5 yes, 1 absent

Senator Nething will carry

REPORT OF STANDING COMMITTEE (410)
January 28, 2009 1:30 p.m.

Module No: SR-17-1112
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2236: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2236 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2236

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2236

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10966, 11026

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2236.

Malcolm Brown, Real Property Section of the ND State Bar Association: Support (attachment).

Rep. Wolf: How would a restriction appear at the County Recorder.

Malcolm Brown: It could be a notation on the Trust itself, although people record a short notice that the Trust has been created and maybe someone had put in there who has the power to sell it. That might be something that they record.

Rep. Wolf: Would that be filed in district court or where.

Malcolm Brown: Trusts do not have to be filed any place. Sometimes they are filed with the district court if it requires ongoing supervision; but more often than that, they aren't. What you might see is a deed from John Smith to the Smith Family Trust, or from John Smith to Agnes Smith, Trustee of the Smith Family Trust. That might be all that you see. If that's all there is, then this addition to the statute would let a title examiner know that the trustee has the power to sell the property.

Rep. Vig: The word presumed is in there. How often is the presumption declared false. Is that pretty easily done.

Malcolm Brown: I believe any presumption is rebuttal. But the burden of proof to rebut it would be on the person who said there is no restriction of record.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened in the afternoon session.)

Chairman DeKrey: We will take a look at SB 2236. What are the committee's wishes.

Rep. Delmore: I move a Do Pass.

Rep. Dahl: Second.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Hatlestad

Date: 3/16/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Delmore Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 (No) 0 (Absent) 0

Floor Carrier: Rep. Hatlestad

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2236: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2236 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2236

Same given to House.

*Attachment 1
SB 2236*

Testimony of Malcolm H. Brown in support of SB 2236

My name is Malcolm H. Brown. I am an attorney appearing on behalf of the Real Property Section of the State Bar Association of North Dakota. This bill was drafted and introduced by Senators Holmberg and Hogue at the request of our Section.

The Uniform Trust Code was enacted by the 2007 Legislature. Our Section was concerned that an older section of the law regarding the powers of a trustee with reference to real estate was repealed by the new Trust Code, and the new Trust Code was rather vague as to the trustee of the trust transferring title to real property. Thus, we have proposed in this bill a new section to Chapter 47-10 of the Century Code that specifically states that the trustee of the trust that holds title to real property is presumed to have the power to sell, convey and encumber the property unless restrictions appear in the records of the county recorder.