

**Senate Political Subdivisions Committee  
Hearing on SB 2285**

Testimony from North Land Title Association  
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Mr. Chairman and members of the committee, my name is Michelle Gibbens. I am an attorney in Cando, a licensed abstracter, and own the abstract companies in Rolette County and Cavalier County. I am also the current Vice President and incoming President of the North Dakota Land Title Association, which is comprised of the abstract companies in every county in this State.

I may be one of the only abstracters you hear from today, so I would like to offer you a few reasons from the perspective of a licensed abstracter on why I am here to oppose SB2285 and hope you will give it a DO NOT PASS.

First, what is an abstract? The most concise explanation is that an abstract is a summary of the history of ownership of a specific parcel of land. Abstracters look at every document recorded against a specific parcel and summarize the key information from each document. It is also our responsibility to keep track of miscellaneous documents, which may not be recorded against specific parcels, but against the entire county's records: for example, a county's zoning ordinances may only affect certain townships or cities, and it is our job to notify owners of those documents by including them in the appropriate abstract.

You can also think of an abstract as a "living" document. You can keep adding entries to an abstract as more documents are recorded. For example, if someone asked me to create an abstract on January 1, 2010, I would have shown them all documents recorded from the very first document on that parcel, likely some time in the late 1800's or early 1900's, up until the very last document recorded as of January 1, 2010. I sign the abstract certificate, certifying that I have included all instruments on the lands described in the abstract, and I impress my abstracter's seal. It is considered an original, certified document.

Now, let's say that same person comes in to my office today and needs to find out what documents were recorded since the last time they had the abstract in my office. They would bring in the original abstract that I created for them on January 1, 2010, and I would show them every document recorded after that date, up until the last document recorded on February 5, 2021. I would simply add those entries to the end of the abstract, showing the continuation of title evidence, and certify it again to cover the new entries.

What do I bill for? I only bill for the documents I abstract in that particular update. When I created the abstract on January 1, 2010, let's say I showed them 100 documents recorded up to that time. I billed them for 100 entries in the abstract. When I update that abstract today, let's say I add 5 new documents. This time, I bill them only for those 5

new entries. The previous 100 entries were already paid for.

So, where do easements come in? Easements are described in N.D.C.C. Chapter 47-05. Simply, an easement is the act of one parcel of land burdening another. For example, a utility right of way easement. That easement would evidence the authority of a telephone line or a water line to cross a piece of land. The utility becomes dominant over that parcel. The underlying land, which is subject to the easement is considered servient. By recording such an easement, the servient parcel is made aware of their limitations on the use of that particular parcel.

Also, easements must be specific. N.D.C.C. 47-05-02.1 requires that an easement “shall be properly described” as to the specific real property which it benefits and burdens. So, a telephone utility cannot simply burden an entire county by recording a document that says, “Ward County has a phone line running through it.” It must be described so that there is an identifiable location or area for that particular dominant use.

Most entries in an abstract will be a summary of the original document. You can imagine how large an abstract would be if you had to include every word of every document ever recorded on a parcel. But certain documents, regardless of how long ago they were recorded, must be shown in full. One of the exceptions for summarizing documents in an abstract is an easement. This is because there is no standard form for an easement, and no standard type of information. A warranty deed for a quarter of farmland is going to look basically the same from one to the next. Even a deed for farmland will look similar to a deed for a house. It is just the conveyance of a specific parcel. But easements are different. An easement for a phone line will have much different language than an easement for a driveway, or a fence, or a wall, or an oil pipeline. Much more information included in an easement must be included in the abstract. If someone records a 15-page easement, it’s my job to parse through that document and recite all of the pertinent information for the landowner.

Regardless of how much time I must spend reviewing the document or reciting the information, I charge for that single entry in the abstract. I charge \$15 as set by statute.

Perhaps most important to our discussion today is the fact that, once I show you an easement in an abstract, I don’t need to show it again. It is now a part of the document. The next time someone brings in their abstract to be updated to the current date, I don’t include documents from the previous update, because they have already been shown.

Now, back to the billing side of things. When I bill out that 100-entry abstract, I send the bill to the person who ordered the abstract. With this proposed amendment to the abstracter fees, I would be creating numerous bills for particular abstract entries. If I showed 10 easements in that abstract, I would have to create 11 bills. One for the person who ordered the abstract, and 10 more for each easement holder.

This raises many questions. How do I bill someone who did not place an order for the abstract update? If I now must send out 10 times more bills than before, who will spend

all that time in my billing department? I have 2 employees. I am the billing department. What happens when an easement was recorded in 1918 and the particular utility company no longer exists? Where do I send that bill? Is it my job to find out if there was a corporate merger and track down their accounts payable department?

If \$150 worth of entries were not paid for in the abstract, I would not be releasing the abstract. I would have no guarantee that the entries ever get paid for. While I wait for those few stragglers to pay their \$15 invoices, what happens to the closing that was the reason for this update? Does it wait indefinitely? Does it get cancelled because no one was able to look at the title evidence? Who is at fault for the cancellation? Am I, as the abstracter, now responsible for the sale falling through because easement holders wouldn't pay my bill?

These are the reasons I oppose this bill and why I hope you will give it a DO NOT PASS.

I would be happy to answer any questions that you may have.