



March 19, 2025
Senate Industry and Business
HB 1401
Senator Jeff Barta, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the North Dakota League of Cities, in support of HB 1401. I am the deputy director and attorney for the North Dakota League of Cities.

Currently, when selling real property, cities have the option to either sell the property by a public sale or through a non-exclusive listing agreement with a real estate broker. A public sale requires either selling the property by taking open bids at a time set at a meeting or setting a time for written bids to be submitted. A public sale requires publishing notice of the sale in the official newspaper once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. (NDCC § 40-11-04.1)

Alternatively, a city can sell property using a non-exclusive listing agreement with a real estate broker by passing a resolution describing the property to be sold, defining the maximum compensation, and stating that the city reserves the right to reject all offers determined to be insufficient. (NDCC § 40-11-04.2) Under a non-exclusive listing agreement, multiple real estate brokers can market and try to sell the property and collect any commission for the sale; however, it is my understanding that the MLS property listing service cannot be used for non-exclusive listing agreement. City officials have also told me that not many real estate brokers are interested in selling properties using non-exclusive listing agreements.

Please note that there are some cities that have used home rule authority to enact an ordinance allowing for working with real estate brokers for real property sales. In those cases, this bill would add more definition to that process. It would provide an avenue for non-home rule cities to work with a real estate broker.

Under HB 1401, in order to use the exclusive listing agreement, the city would need to pass a resolution describing the property to be sold, defining the maximum compensation, and stating that the city reserves the right to reject all offers determined to be insufficient and allow real estate brokers to submit proposals to enter an exclusive listing agreement with the city to sell the property. The real estate broker must be chosen through a competitive process.

After passing the resolution, it needs to be placed on the city's website for at least 14 days prior to reviewing proposals to ensure any real estate broker who is interested in working with the city on the listing has the chance to submit a proposal. The proposals from real estate brokers are evaluated based on:

- a. Experience of the licensed real estate broker;
- b. Experience of the licensed real estate broker selling similar property;
- c. Marketing strategy the licensed real estate broker intends to use; and
- d. Rate of fee, compensation, or commission the licensed real estate broker intends to accept.

Subsection 4 of the bill was added to address concerns in the House about expressing the House's desire to make sure a buyer's real estate broker is also receiving compensation for the sale from the city; however, the language had to be carefully crafted in light of current litigation regarding the division of commissions between real estate brokers between brokers involved in a real estate transaction.

Allowing a way for cities to have exclusive listing agreements with real estate brokers would make city real estate that is for sale more widely marketed to the public and would also help to ensure that cities are getting fair market value for the properties they are selling.

The North Dakota League of Cities respectfully requests a Do Pass recommendation on HB 1401.