

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1401

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB1401
1/21/2025

A BILL for an Act to amend and reenact section 40-11-04.2 of the North Dakota Century Code, relating to the transfer of real property by exclusive and nonexclusive listing agreements.

8:30 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Christy, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Land purchase
- MLS Listing
- Selecting a broker
- Competitive process
- Update Law Language
- Negotiated commissions

8:30 a.m. Representative Jonathan Warrey, District 22, Casselton, ND, introduced and submitted testimony.

8:36 a.m. Stephanie Engbretson, Deputy Director/Attorney, ND League of Cities, testified in favor and submitted testimony #30312.

8:45 a.m. Jill Beck, CEO, ND Association of Realtors, testified in favor and submitted testimony #30426.

8:51 a.m. Representative Schauer moved Do Pass.

8:51 a.m. Representative Vollmer seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Landon Bahl	N
Representative Collette Brown	Y
Representative Josh Christy	N
Representative Lisa Finley-DeVille	Y
Representative Karen Grindberg	Y

Representative Jorin Johnson	N
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	N
Representative Mike Schatz	N
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion failed 7-7-0

8:59 a.m. Vice Chairman Ostlie closed the meeting.

Diane Lillis, Committee Clerk



January 21, 2025

House Industry Business and Labor

HB 1401

Rep. Jonathan Warrey, 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, any real estate broker can try to market and 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.

HB 1401 would add the option for a city governing board to use an exclusive listing agreement with a real estate broker. 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.

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.



To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

January 21, 2025

Testimony in Support of HB 1401

Chairman Jonathan Warrey
Industry, Business and Labor Committee
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505 S

Chairman Warrey and Members of the House Industry, Business and Labor Committee, for the record my name is Jill Beck and I am the CEO representing the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® membership is made up of more than 2,200 REALTORS® and more than 250 Business Partner members.

This will be short and brief as we were made aware of this bill prior to being forward by the North Dakota League of Cities for introduction and were in support of it.

We believe that cities should have the option of using a non-exclusive or exclusive listing agreement. For clarification and understanding an exclusive listing agreement is with one agent and brokerage and they work for the seller ensuring that only that brokerage can market that listing. A non-exclusive listing agreement allows the city to open the property up for sale to all buyers and the city may pay the one agent/brokerage who brings the buyer.

It is my understanding, from several of our members, that this language change would (1) allow cities more choice when selling property; (2) enter into agreements where the listing agent would owe fiduciary duties to the cities and work to protect them; and (3), would update the language of the law to match the current practice of cities across the state. Most of our members do business with some type of exclusive agency agreement and these same members have utilized these agreements in listing property for North Dakota cities in the past years.

We recommend and ask for your full support with a **DO PASS** on House Bill 1401.

My contact info is below if you have any further questions.

Jill Beck, CEO
North Dakota Association of REALTORS®
Jill@ndrealtors.com
701-355-1010

1616 Capitol Way | Bismarck, ND 58501
office: 701-355-1010 | **toll free:** 800-279-2361
info@ndrealtors.com | www.ndrealtors.com



2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB1401
1/27/2025

A BILL for an Act to amend and reenact section 40-11-04.2 of the North Dakota Century Code, relating to the transfer of real property by exclusive and nonexclusive listing agreements.

11:40 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Christy, Finley-DeVille, Grindberg, Kasper, Koppelman, Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Competitive process
- Public notice
- Objective review

11:45 a.m. Representative Koppelman moved Adopt Amendment LC #25.1105.01001, #38422.

11:45 a.m. Representative Schauer seconded the motion.

Voice vote.

Motion passed.

11:48 a.m. Representative Schauer moved a Do Pass as amended.

11:48 a.m. Representative Christy seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Karen Grindberg	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Mike Schatz	Y
Representative Austin Schauer	Y

Representative Daniel R. Vollmer	Y
----------------------------------	---

Motion passed 13-0-1

11:49 a.m. Representative Grindberg will carry the bill.

11:49 a.m. Vice Chairman Ostlie closed the meeting.

Diane Lillis, Committee Clerk

January 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

*JB 1-27-25
1082*

HOUSE BILL NO. 1401

Introduced by

Representatives Warrey, Longmuir, Mitskog, Motschenbacher, Schneider, Stemen

Senators Axtman, Davison, Thomas

1 A BILL for an Act to amend and reenact section 40-11-04.2 of the North Dakota Century Code,
2 relating to the transfer of real property by exclusive and nonexclusive listing agreements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 40-11-04.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **40-11-04.2. Transfer of real property by exclusive and nonexclusive listing**
7 **agreements.**

8 1. As an alternative to the procedure established under section 40-11-04.1, the governing
9 body of a city may by resolution ~~describe~~:

10 a. Describe the real property of the city which is to be sold; ~~provide~~

11 b. Provide a maximum rate of fee, compensation, or commission; and ~~provide~~

12 c. Provide that the city reserves the right to reject any and all offers determined to
13 be insufficient.

14 2. After adoption of the resolution, and publication of the resolution on the city website for
15 at least fourteen days, if the city maintains a website, the governing body of a city may
16 engage licensed real estate brokers to attempt to sell the described property by way of
17 nonexclusive listing agreements or by way of an exclusive listing agreement if the real
18 estate broker is selected through a competitive process.

19 3. A proposal from a licensed real estate broker to enter an exclusive listing agreement
20 with the governing body of a city must be based on the:

Feb 2012

- 1 a. Experience of the licensed real estate broker;
- 2 b. Experience of the licensed real estate broker selling similar property;
- 3 c. Marketing strategy the licensed real estate broker intends to use; and
- 4 d. Rate of fee, compensation, or commission the licensed real estate broker intends
- 5 to accept.
- 6 4. In the negotiation of a purchase agreement with a buyer represented by a real estate
- 7 broker, the governing body of a city may agree to pay compensation to the buyer's real
- 8 estate broker. In the negotiation of a listing agreement, the governing body of a city
- 9 shall consider the financial impact of paying compensation to the buyer's real estate
- 10 broker on the total fees, compensation, or commission that may become payable by
- 11 the city.

**REPORT OF STANDING COMMITTEE
HB 1401**

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **AMENDMENTS** ([25.1105.01001](#)) and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1401 was placed on the Sixth order on the calendar.

25.1105.01001
Title.02000

Adopted by the Industry, Business and
Labor Committee
January 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1401

Introduced by

Representatives Warrey, Longmuir, Mitskog, Motschenbacher, Schneider, Stemen

Senators Axtman, Davison, Thomas

1 A BILL for an Act to amend and reenact section 40-11-04.2 of the North Dakota Century Code,
2 relating to the transfer of real property by exclusive and nonexclusive listing agreements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 40-11-04.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **40-11-04.2. Transfer of real property by exclusive and nonexclusive listing**
7 **agreements.**

8 1. As an alternative to the procedure established under section 40-11-04.1, the governing
9 body of a city may by resolution ~~describe~~:

10 a. Describe the real property of the city which is to be sold; ~~provide~~

11 b. Provide a maximum rate of fee, compensation, or commission; and ~~provide~~

12 c. Provide that the city reserves the right to reject any and all offers determined to
13 be insufficient.

14 2. After adoption of the resolution, and publication of the resolution on the city website for
15 at least fourteen days, if the city maintains a website, the governing body of a city may
16 engage licensed real estate brokers to attempt to sell the described property by way of
17 nonexclusive listing agreements or by way of an exclusive listing agreement if the real
18 estate broker is selected through a competitive process.

19 3. A proposal from a licensed real estate broker to enter an exclusive listing agreement
20 with the governing body of a city must be based on the:

- 1 a. Experience of the licensed real estate broker;
- 2 b. Experience of the licensed real estate broker selling similar property;
- 3 c. Marketing strategy the licensed real estate broker intends to use; and
- 4 d. Rate of fee, compensation, or commission the licensed real estate broker intends
- 5 to accept.
- 6 4. In the negotiation of a purchase agreement with a buyer represented by a real estate
- 7 broker, the governing body of a city may agree to pay compensation to the buyer's real
- 8 estate broker. In the negotiation of a listing agreement, the governing body of a city
- 9 shall consider the financial impact of paying compensation to the buyer's real estate
- 10 broker on the total fees, compensation, or commission that may become payable by
- 11 the city.

2025 SENATE INDUSTRY AND BUSINESS

HB 1401

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1401
3/19/2025

A bill relating to the transfer of real property by exclusive and nonexclusive listing agreements.

9:16 a.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- ND League of Cities
- Selection of a real estate broker, competition, and fairness
- National changes in real estate law
- Limited buyers and opportunity for fair market value
- Advertising in newspapers and city minutes
- Multiple listing services
- Clarification of exclusive and nonexclusive contracts

9:16 a.m. Representative Jonathan Warrey, District 22, testified in favor and introduced the bill.

9:21 a.m. Stephanie Dassinger Engebretson, Deputy Director and Attorney, ND League of Cities, testified in favor and submitted testimony #42968.

9:27 a.m. Jill Beck, CEO, ND Association of Realtors, testified in favor and submitted testimony #42971.

9:29 a.m. Chairman Barta closed the hearing.

9:30 a.m. Senator Enget moved a Do Pass.

9:30 a.m. Senator Boehm seconded the motion.

9:31 a.m. Stephanie Dassinger Engebretson, Deputy Director and Attorney, ND League of Cities, answered the committee's questions.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0

Senate Industry and Business Committee
HB 1401
3/19/25
Page 2

Senator Enget will carry the bill.

9:32 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1401 ([25.1105.02000](#))**

Industry and Business Committee (Sen. Barta, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1401 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.



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.



To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

March 18, 2025

Testimony in Support of HB 1401

Chairman Barta
Senate Industry, Business Committee
North Dakota Senate
600 East Boulevard Avenue
Bismarck, ND 58505 S

Chairman Barta and Members of the Senate Industry and Business Committee, for the record my name is Jill Beck and I am the CEO representing the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® membership is made up of more than 2,200 REALTORS® and more than 250 Business Partner members.

This will be short and brief as we were made aware of this bill prior to being forwarded for introduction by the North Dakota League of Cities and were in support of it.

We believe that cities should have the option of using a non-exclusive or exclusive listing agreement. For clarification and understanding an exclusive listing agreement is with one agent and brokerage and they work for the seller ensuring that only that brokerage can market that listing. A non-exclusive listing agreement allows the city to open the property up for sale to all buyers and the city may pay the one agent/brokerage who brings the buyer.

It is my understanding, from discussion with several of our members, that this language change would (1) allow cities more choice when selling property; (2) enter into agreements where the listing agent would owe fiduciary duties to the cities and work to protect them; and (3), would update the language of the law to match the current practice of some cities across the state. Would also give the cities more exposure of the property they are selling to the service of a full Multiple Listing Service. Most of our members do business with some type of exclusive agency agreement and these same members have utilized these agreements in listing property for North Dakota cities in the past.

We recommend and ask for your full support with a **DO PASS** on House Bill 1401.

My contact info is below if you have any further questions.

Jill Beck, CEO
North Dakota Association of REALTORS®
Jill@ndrealtors.com
701-355-1010