

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1188

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1188
01/16/2023

Relating to the prohibition of unfair service agreements.

Vice Chairman Ostlie called to order 10:22 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Member absent: Warrey.

Discussion Topics:

- Real Estate brokerage firms
- Residential homes
- Enforcement damages
- Realtor member education
- Title work

In favor:

Representative Scott Louser, bill sponsor (no written testimony)
Nick Hacker, Legislative Chair, ND Land Title Association, #16877
Jill Beck, CEO- ND Association of Realtors (“NDAR”), #16881
Kayla Pulvermacher, representing the ND Association of Builders (no written testimony)
Shane Cullen, Government Affairs Committee, ND Association of Realtors #13386

Vice Chairman Ostlie closed the hearing at 10:56 AM

Representative Schauer moved a do pass.
Representative Christy seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y

Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	AB

Motion passed 13-0-1

Representative Schauer to carry the bill.

Vice Chairman Ostlie adjourned the meeting at 11:00 AM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1188: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB
1188 was placed on the Eleventh order on the calendar.

2023 SENATE INDUSTRY AND BUSINESS

HB 1188

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1188
3/7/2023

An act relating to the prohibition of unfair service agreements.

2:15 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Non-titled recorded agreements
- Consumer rights
- 40-year contract
- Land contract
- Service agreements

2:17 PM Representative Louser, District 5 from Minot introduced HB 1188 and testified in favor. No written testimony.

2:21 PM John Ward, Attorney with the North Dakota Land Title Association introduced Nick Hacker with the North Dakota Land Title Association who testified in favor of HB 1188.
#22409

2:31 PM Jill Beck, CEO ND Realtors Association, testified in favor of HB 1188. #22643

2:36 PM Kayla Pulvemacher, CEO, ND Association of Builders testified in favor of HB 1188. No written testimony.

2:37 PM Shane Cullen, North Dakota Realtors Association and Government Affairs Committee, testified in favor of HB 1188. #22593

2:40 PM Senator D. Larsen closed the hearing on HB 1188.

2:40 PM Senator Barta moved to DO PASS HB 1188. Senator Boehm seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 DO PASS HB 1188.

Senator D. Larsen will carry the bill.

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Additional written testimony:
#22689 Janelle Moos

2:42 PM Chairman D. Larsen closed the hearing.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1188: Industry and Business Committee (Sen. Larsen, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1188 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1188



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

January 13, 2023

Testimony in Support of HB 1188

Chairman Louser and Members of the House Industry, Business and Labor Committee, for the record my name is Shane Cullen and I am a member of the North Dakota Association of REALTORS® and also of their Government Affairs Committee. I am also a REALTOR® practicing in the Fargo-Moorhead area.

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

I am speaking in support of House Bill 1188, which relates to the prohibition of unfair service agreements. NDAR's Government Affairs Committee and Board of Directors has brought this bill forward to address "40-Year Listing Contracts" (also known as "Spring Listings") in real estate.

"40-Year Listing Contracts" generally consists of an exclusive agreement between a real estate brokerage (licensed in the state) and a homeowner for future real estate listing services in exchange for upfront financial compensation, which can range between a few hundred to a few thousand dollars. The duration of the agreement can be up to 40 years for which the homeowner is obligated to use the listing services of that brokerage when they sell the home or to pay an early termination fee. Some issues that appear to occur with these agreements are that homeowners who sign them do not fully realize what they have committed to, or do not realize the agreement places a lien on their property.

We feel as though real property covenants should bind and concern the land, rather than be tied to the individual owner. Our intention with this bill is to prohibit the practice of these unfair service agreements. Prohibition of these agreements will protect consumers and ensure that property rights are not unreasonably restrained.

With this being said, the North Dakota Association of REALTORS® is asking for a do-pass from this committee on House Bill 1188. I would be happy to answer any questions from the Chairman and the Committee.

Shane Cullen
NDAR Government Affairs Committee Member
REALTOR®, PARK CO., REALTORS®

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House Industry Business and Labor Committee
HB 1188

Testimony from the North Land Title Association

Chairman Louser and Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association. I also serve as the CEO of The Title Team.

The title insurance and real estate closing industry's help drive our state's economy through the safe and efficient transfer of real property. Our industry provides services in every county of the state through our 88 members. Our job is to ensure buyers acquire real property as they expect, free and clear of liens and encumbrances.

Across the county a new scheme arose in the last few years related to companies that filing Non-Title Recorded Agreements for Personal Service (NTRAPS) in the land records. The company pays a homeowner \$500-\$1,000 in return for the right to list their home for the next 40 years and receive 3% of the sales price when the property is sold.

This type of agreement is unconscionable at best considering the average sale price of a home today, and what it would be in 20 years. We are now finding these agreements in dozens of states, including a few thousand of them in Minnesota. In fact, we found one in Moorhead, MN already. We have not found any in North Dakota yet but assume they will be here in no time without House Bill 1188.

What are Non-Title Recorded Agreements for Personal Services (NTRAPS)?

They are agreements in which a service provider offers a homeowner nominal upfront compensation in exchange for an agreement for future services. These agreements are recorded in property records and purport to run with the land, binding future successors and adding cost, complexity, and barriers to transferring, selling or financing their property.

Are NTRAPS currently being used in the marketplace?

Brokerage firms are offering nominal cash to homeowners if they sign a listing agreement that is binding for up to 40 years. Since 2018, these types of agreements have been recorded in property records as covenants and encumbrances on the title to homes. Homeowners face penalties of 3% of their property value, as determined at the sole discretion of the vendor, if they wish to have the encumbrance removed. For example, that 3% applies if they want to list their property with another brokerage firm or for other unanticipated occurrences such as:

- Transferring title to a family member
- Foreclosure
- Transfer on death
- Conveyance due to divorce
- Sale to another person not involving licensed real estate professionals

If the homeowner fails to pay this penalty, the firm can file a lien on the home.

HB 1133 seeks to remove impediments to transferring or financing the impacted real estate by:

1. Making NTRAPS unenforceable
2. Creating penalties if NTRAPS are recorded in property records
3. Providing for the removal of NTRAPS from property records and recovery of damages.

The goal of this legislation is to protect consumers and provide a remedy, while discouraging future unfair and deceptive trade practices in real estate.

The bill has specific exemptions that are important for homeowners including:

- A home warranty or similar product that covers the cost of maintenance of a major home system (for example, plumbing, HVAC or electrical wiring),
- An insurance contract,
- An option to purchase or right of refusal,
- A maintenance or repair agreement entered by a homeowners' association,
- A mortgage loan or a commitment to make or receive a mortgage loan,
- Impairment of contractor lien rights and remedies.

House Bill 1188 protects consumers, creates clarity for title examiners and real estate closers when they come across these, and it provides attorneys and regulators with the ability and authority to assist consumers in seeking damages caused by NTRAPS.

Thank you for your time this morning. We would ask the committee to provide a Do Pass recommendation on this important bill.

Nick Hacker
Legislative Chair
North Dakota Land Title Association
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North Dakota Association of REALTORS®

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

January 16, 2023

Testimony in Support of 1190

Chairman Louser 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. We are the non-profit professional member organization for real estate licensees and those businesses that enhance our members business. While this is who our members are I also want to be clear that part of our mission at NDAR is protecting private property rights of which this bill falls under.

As with HB 1188 we are testifying on this bill for the same reason of consumer protection.

There is a practice out there known as wholesaling which an individual makes an offer on a home but does not intend to go to closing of the property. They look for an interested party to purchase the equitable interest in the contract and if they do not find that purchaser, they cancel the deal which can be detrimental to the home seller and their future.

As many of you may be aware we have had property condition disclosure that came through this body the last two sessions and was implemented and updated. We feel the buyer and seller should be aware of the wholesaler and it should be disclosed.

We do have a member who has been involved in wholesaling and is well versed on the practice and will explain a bit further and answer any questions.

I would ask for your support of HB 1190 as it protects our citizens. Thank you.

Jill Beck, CEO

North Dakota Association of REALTORS®

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Senate Industry and Business Committee
HB 1188
Testimony from the North Land Title Association

Chairman Larsen and Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association. I also serve as the CEO of The Title Team.

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Across the county a new scheme has arisen related to companies filing Non-Title Recorded Agreements for Personal Service (NTRAPS) in the land records. The company pays a homeowner \$500-\$1,000 in return for the right to list their home for the next 40 years and receive 3% of the sales price when the property is sold.

This type of agreement is unconscionable considering the average sale price of a home today, and what it would be 40 years from now. We are now finding these agreements in dozens of states, including a few thousand of them in Minnesota. In fact, we found one in Moorhead, MN already. We have not found any in North Dakota yet but assume they will be here in no time without House Bill 1188.

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The goal of this legislation is to protect consumers and provide a remedy, while discouraging future unfair and deceptive trade practices in real estate.

The bill has specific exemptions that are important for homeowners including:

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House Bill 1188 protects consumers, creates clarity for title examiners, and provides attorneys and regulators with the ability and authority to assist consumers in seeking damages caused by NTRAPS.

Thank you for your time this morning. We would ask the committee to provide a Do Pass recommendation on this important bill.

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

March 6, 2023

Testimony in Support of HB 1188

Chairman Larsen and Members of the Senate Industry and Business Committee, for the record my name is Shane Cullen, and I am a member of the North Dakota Association of REALTORS® and also of their Government Affairs Committee. I am also a REALTOR® practicing real estate in the Fargo-Moorhead market.

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"40-Year Listing Contracts" generally consists of an exclusive agreement between a real estate brokerage (needing to be licensed in the state) and a homeowner for exclusive future real estate listing services in exchange for upfront financial compensation, which can range between a few hundred to a few thousand dollars. The duration of the agreement can be up to 40 years for which the homeowner is obligated to use the listing services of that brokerage when they sell the home or to pay an early termination fee. Some issues that appear to occur with these agreements are that homeowners who sign them do not fully realize what they have committed to, or do not realize the agreement places a lien on their property.

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Shane Cullen

NDAR Government Affairs Committee Member

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

March 7, 2023

Testimony in Support of 1188

Chairman Larsen and Members of the House 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. We are the non-profit member organization for real estate licensees and those businesses that enhance our members business. While this is who are members are I also want to be clear that part of our mission is protecting private property rights as well as consumers involved in the process of which this bill impacts.

We were made aware of what we are referencing as a “40-year listing or Spring Listing” in mid-September of 2021 from members of the Fargo Moorhead Area Association of REALTORS®. They had found or were made aware of an agreement that had been done in neighboring Moorhead, MN. Our leadership and Government Affairs Committee quickly did more research and found that it was happening in many states and most of those states were looking at legislation to stop it. We created a taskforce to investigate what our next steps should be, and that taskforce consisted of members of our Government Affairs Committee, our legal counsel, at least two representatives from both the Land Title Association (Title Companies) and our state licensing authority, the North Dakota Real Estate Commission.

Several states have had their Attorney General get involved prior to seeking legislation as it is predatory to those homeowners who are approached to enter these agreements/contracts. They typically reach out to those that may be vulnerable due to a death of a spouse, financial issues, behind on taxes or other hardship. They are deceiving consumers with misleading contracts/agreements. After the agreement is in place this company files liens on the homes in county records which then makes it difficult for the homeowners to refinance their property or take out home equity loans, The homeowners were not warned that this company would be taking out a lien on their property.

These practices are deceptive, unfair, and unconscionable business practices. While we have not seen them in North Dakota we want to proactive and make sure our citizens are protected from this scheme.

You can google “40-year listing” and find many stories on this deceptive practice.

I would ask for your support of HB 1188 as it protects our citizens. Thank you.

Jill Beck, CEO
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House Bill 1188

March 7, 2023

Senate Industry and Business Committee

Janelle Moos, AARP ND – jmoos@arp.org

Chair Larsen and members of the Senate Industry and Business Committee,

My name is Janelle Moos, Associate State Director for Advocacy with AARP North Dakota. We are offering support for HB 1188, relating to the prohibition of unfair service agreements.

AARP North Dakota on behalf of its 83,000 members desires to underscore that for many North Dakotans, their home is their most important asset and the cornerstone of their financial stability. They rely upon federal, state, and local policymakers to safeguard them against fraud, deception, and unfair practices. Straightforward business practices, marketing materials and contracts empower consumers to understand both the benefits and risks of products and services so they can make informed choices – including engaging in an agreement for future services

Older homeowners are not immune from the effects of recent economic trends and the resulting stress placed on family budgets. Rising home values are leading to higher property taxes. The greater frequency of natural disasters is leading to increases in the cost of homeowner's insurance. And inflation is driving prices higher for most necessities, like food, prescription drugs, and utilities. These price increases affect older people more deeply since they are more likely to be retired and live on a fixed income.

We know that older adults want to stay in their homes and communities as they age, yet many already face tremendous challenges as property taxes soar beyond their reach; and as they search for the supportive services that will enable them to live with dignity and independence in their own homes, many are now being confronted with the offer of an unfair service agreement promising quick cash as a marketing technique. Older adults can be especially vulnerable and need extra safeguards in order to be protected from such an unfair, deceptive, and abusive practice. Furthermore, failing to disclose or misleading consumers about the way that these agreements for future services will slow or prevent a consumer from refinancing or tapping into their home equity – denying them either the opportunity to save money or to access much-needed capital.

We encourage you to vote in favor of HB 1188 and AARP North Dakota stands ready to work with you to educate consumers and to explore the potential for a state law to protect and preserve the financial security of older North Dakotans. Thank you.