

MEMORANDUM

To: Minnesota House Environment and Natural Resources Finance and Policy Committee

From: Kevin Dunlevy, Co-chair, Legislative Committee, Real Property Section, Minnesota State Bar Association

Re: HF1733 recording fee surcharge

Public Policy of Statewide Uniform Recording Fees

I have been a real estate attorney for 36 years, and a member of the MSBA's Real Property Section's Legislative Committee since 1986. I presently co-chair the committee.

Uniform recording fees across the state have long been an objective of the Real Property Section, due to recording and title problems caused by non-uniform recording fees. If recording fees vary from county to county, that increases the probability of document rejection and increases the labor and expenses necessary to complete real estate transactions across the state.

To reduce the problems cause by non-uniform fees, the Real Property Section engaged in negotiations in 2005 with other real estate industry trade associations and interested parties, including county commissioners, county recorders, the Minnesota Association of County Officers, the Minnesota Association of Realtors, the Minnesota Land Title Association, and real estate lender trade associations. The groups agreed that recording fees would increase, a portion of the increase would be dedicated to county recording offices, and all non-uniform fees would be eliminated. The dedication of a portion of the recording fee increase to the operation of county recording offices created a direct relationship between the recording fee charged and the government services provided. The deal was codified in Minnesota Statutes section 357.18.

The recording fee surcharge in HF1733 is diametrically opposed to the rationale and public policy of statewide uniform recording fees. And by creating inconsistent recording fees throughout the state, it will increase the chances that documents will be rejected for recording, which can cause expensive title litigation.

Issues Caused by Lack of Uniform Recording Fees

The main issue caused by non-uniform recording fees is document rejection. If real estate documents are submitted for recording without the correct fees, the recording package may be rejected. HF1733 targets the most important real estate documents for the fee surcharge: deeds and mortgages. If a deed or mortgage is rejected for recording, other interests can take priority. Judgments, tax liens, bankruptcies, mechanic liens, other mortgages, and fraudulent interests can take priority when deeds or mortgages are

rejected for recording. I've had dozens of cases in which the home equity mortgage was recorded before the prime mortgage, because the prime mortgage was rejected for recording. I am also aware of cases in which a fraudster was able to take priority because the fraudster knew the honest documents were rejected for recording or otherwise defective.

A primary cause for rejection of documents for recording is incorrect recording fees. It can take weeks and months for notification of document rejection to reach the person submitting documents for recording. That means weeks and months during which voluntary and involuntary interests, and fraudulent interests, can take priority, resulting in costly title litigation and damages.

Summary

Due to its long-standing opposition to non-uniform recording fees, the MSBA Real Property Section opposes the \$25 recording fee surcharge in HF1733.