

MEMORANDUM

To: Minnesota House Housing Committee

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

Re: HF2880 Deed Tax and Mortgage Registry Tax surcharges

Public Policy of Statewide Uniform Recording Fees

I have been a real estate attorney for 37 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 city to city and from county to county, that variance increases the probability of document rejection, creates priority problems which require judicial intervention, and increases the labor and expenses necessary to complete real estate transactions across the state.

To reduce the problems caused 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. There is no direct relationship between Deed Taxes and Mortgage Registry Taxes in Minnesota Statutes chapter 287 and local housing.

The Deed Tax and Mortgage Registry Tax surcharges in section 3 of HF2280 are diametrically opposed to the rationale and public policy of statewide uniform recording fees. If each of 853 incorporated cities and each of 87 counties in the state can levy its own Deed Tax and/or Mortgage Registry Tax, there will be inconsistent recording fees throughout the state, which will increase the chances that documents will be rejected for recording, which can cause expensive title litigation and prejudice good faith purchasers.

While counties are typically included in the legal descriptions of deeds and mortgages, the incorporated cities are not. The postal address of the property is not necessarily the municipality in which the property is located, so additional effort will be

required to determine the city in which a property is located. Determining whether a municipality or a county has levied a Deed Tax and/or Mortgage Registry Tax will be time consuming, imprecise, and fraught with peril. There is no easy way to confirm whether a local government has passed a resolution approving the Deed Tax and/or Mortgage Registry Tax surcharge.

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 will be rejected. HF2880 targets the most important real estate documents for surcharges: 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 litigated dozens of cases with these kinds of issues caused by document rejection, often times because the wrong fees were submitted with the documents for recording. A common issue is with home equity mortgages recorded before the prime mortgage, because the prime mortgage was rejected for recording. I am also aware of at least one case in which a fraudster was able to take priority because the fraudster knew the honest documents were rejected for recording.

A primary cause for rejection of documents for recording is incorrect 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. We need to protect property owners and good faith purchasers by protecting the ease of recording documents.

Summary

The MSBA Real Property Section opposes the city and county Deed Tax and Mortgage Registry Tax surcharges in HF2880 due to the section's long-standing opposition to non-uniform recording fees.