

## **N.D.A.G. Letter to Olson (July 13, 1989)**

July 13, 1989

Hon. John M. Olson  
North Dakota Senator  
District 49  
P.O. Box 2674  
Bismarck, ND 58502-2674

Dear Senator Olson:

Thank you for your June 30, 1989, letter concerning Senate Bill No. 2301.

A review of the legislative history surrounding the enactment of Senate Bill No. 2301 indicates that the legislative intent was to exempt mortgages on property located in cities and platted subdivisions from the provisions of N.D.C.C. § 47-18-05.1. The minutes of one legislative hearing state:

SB 2301 provides that Section 47-18-05.1 would not apply to mortgages on property platted under Chapter 40-50, which would include all subdivisions located in cities and rural areas.

Hearing on S. 2301 Before the Senate Judiciary Comm., 51st Leg. (Jan. 17, 1989) (statement of James D. Schlosser). As you noted in your letter, N.D.C.C. ch. 40-50 was repealed in 1987 and replaced with N.D.C.C. ch. 40-50.1. 1987 N.D. Sess. Laws ch. 501, § 20. Because of the erroneous reference to N.D.C.C. ch. 40-50, it is unclear whether Senate Bill No. 2301 accomplishes its goal.

The North Dakota Supreme Court has held that when there is an error on the face of a statute which prevents the fulfilling of legislative intent, the courts will correct the error in order that the intention of the Legislature as gathered from the entire act may be given effect. Schnaible v. City of Bismarck, 275 N.W.2d 859, 867 n.2 (N.D. 1979); City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Applying this rule of construction, I expect that a court would determine that the reference within Senate Bill No. 2301 to N.D.C.C. ch. 40-50 should read N.D.C.C. ch. 40-50.1 and give effect to the intent of the Legislature by making this correction to the statute.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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