

LETTER OPINION
93-L-114

March 23, 1993

Representative Mark Sitz
District 7
Route 1, Box 40-A
Drake, ND 58736

Dear Representative Sitz:

Thank you for your March 23, 1993, letter regarding House Bill 1258 and its affect on the liability of cooperative board members and stockholders.

House Bill 1258 establishes a new section to North Dakota Century Code ch. 32-19 relating to the procedures for obtaining deficiency judgments on commercial real property. Commercial real property is defined as all real property except residential property consisting of less than three residential units and agricultural property as defined by N.D.C.C. ? 57-02-01.

The current procedures for obtaining deficiency judgments are outlined in N.D.C.C. ? 32-19-06, a copy of which is attached. The primary procedural distinctions between N.D.C.C. ? 32-19-06 and House Bill 1258 lie in the elimination of the requirement that a separate action be brought for a deficiency judgment and a change to have the judge determine the fair market value of the property in question rather than a jury.

The changes made by House Bill 1258 would not affect a board member or stockholder's liability. N.D.C.C. ? 10-15-31(2) specifically provides that "[m]embers, stockholders, and patrons of a cooperative are neither obligated to pay, nor liable upon, any cooperative obligation."

Consequently, neither the board members nor stockholders of a cooperative would be liable for a deficiency judgment rendered against a cooperative

Representative Mark Sitz
March 23, 1993

pursuant to the provisions of House Bill 1258.

Sincerely

Heidi Heitkamp
ATTORNEY GENERAL

tca/vkk