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Approved January 31, 1951.

JUDICIAL REMEDIES

CHAPTER 217

H. B. No. 541

(Legislative Research Committee)

FORECLOSURE OF REAL ESTATE MORTGAGES; DEFICIENCY

JUDGMENTS; LIMITATION

AN ACT

To amend and reenact sections 32-1904, 32-1906, and 32-1907 of the North Dakota Revised Code of 1943, relating to foreclosures of mortgages; providing for deficiency judgments but limiting them to an amount not exceeding the difference between the mortgage debt and the fair value of the mortgaged premises; and prohibiting other suits except for the difference between the mortgage debt and the fair value of the mortgaged premises, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 32-1904 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

32-1904. WHAT COMPLAINT SHALL STATE.) In an action for the foreclosure or satisfaction of a mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof, and if there have been, whether any and what part

thereof has been collected. The plaintiff shall also state in his complaint whether he will in a later and separate action demand judgment for any deficiency which may remain due to him after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage.

SECTION 2. AMENDMENT.) Section 32-1906 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

32-1906. WHAT JUDGMENT SHALL CONTAIN; DEFICIENCY JUDGMENTS AND OTHER SUITS PROHIBITED IN EXCESS OF AMOUNT BY WHICH DEBT EXCEEDS FAIR VALUE OF MORTGAGED PREMISES; DETERMINATION OF FAIR VALUE OF MORTGAGED REAL PROPERTY.) In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court shall have the power to render judgment for the amount found to be due at the time of the rendition of said judgment, and the costs of the action, and to order and decree a sale of the premises in such mortgage or contract described, or such part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court shall have power to order and compel delivery of the possession of the premises to the purchaser at such sale, but in no case shall the possession of the premises so sold be delivered until after the expiration of one year from such sale, and the court shall direct, and the judgment shall provide, that during such one year period the debtor or owner of the premises shall be entitled to the possession, rents, use, and benefit of the real property sold. The court under no circumstances shall have power to render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or to the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted subsequent to July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if he has so indicated in his complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. Such separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The Court, in such separate action, may render a deficiency judgment against the party or parties personally liable, but such deficiency judgment shall not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there shall be no presumption that such

premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises shall first be submitted to a jury at a regular term or to a jury empaneled for that purpose, and no deficiency judgment can be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by such jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days notice of the time and place when or where such fair value of the mortgaged premises shall be so determined shall, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At such time and place such party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment so obtained shall be enforced by execution as provided by law, except that no execution shall be enforced after three years from the date of the rendition of such deficiency judgment. The mortgagee or vendor or the successor in interest of either shall not be permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if such mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or cancelled in excess of the amount by which such debt and the costs of the action exceed the fair value of the mortgaged premises. Such fair value shall be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment shall be enforced by execution as provided by law except that no such execution shall be enforced after three years after the date of the rendition of such judgment.

SECTION 3. AMENDMENT.) Section 32-1907 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

32-1907. OTHER SUITS PROHIBITED.) Neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made between July 1, 1937 and July 1, 1951, shall the mortgagee or vendor, or the successor in interest or either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given between July 1, 1937, and July 1, 1951, to secure the payment of money loaned upon real estate or to secure the

purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract. Except as otherwise provided in sections 32-1904 and 32-1906, neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made after July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given after July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract except as provided by sections 32-1904 and 32-1906.

§ 4. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved February 21, 1951.

LABOR AND EMPLOYMENT

CHAPTER 218

S. B. No. 124
(Geelan and Blume)

LIMITATION OF ACTION TO RECOVER OVERTIME OR PREMIUM PAY OR PENALTIES ON WAGES REQUIRED BY STATUTE

AN ACT

To amend and reenact section 34-0113 of the 1949 Supplement to the North Dakota Revised Code of 1943 relating to time limit for action to recover overtime or premium pay or penalties on wages required or authorized by any statute.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 34-0113 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows: