

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2295

Introduced by

Senators Wanzek, Klein

Representatives D. Johnson, Nicholas

1 A BILL for an Act to amend and reenact subsection 1 of section 41-09-16 and section 41-09-41
2 of the North Dakota Century Code, relating to real estate descriptions in financing statements
3 covering crops.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 41-09-16 of the 1995
6 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 7 1. Subject to the provisions of section 41-04-22 on the security interest of the
8 collecting bank, section 41-08-36.1 on security interests in securities, and section
9 41-09-13 on a security interest arising under the chapters on sales and leases, a
10 security interest is not enforceable against the debtor or third parties with respect
11 to the collateral and does not attach unless all of the following take place:
- 12 a. The collateral is in the possession of the secured party pursuant to
 - 13 agreement, or the debtor has signed a security agreement that contains a
 - 14 description of the collateral and, in addition, if the security interest covers
 - 15 ~~crops growing or to be grown~~ or timber to be cut, a description of the land
 - 16 concerned.
 - 17 b. Value has been given.
 - 18 c. The debtor has rights in the collateral.

19 **SECTION 2. AMENDMENT.** Section 41-09-41 of the 1995 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **41-09-41. (9-402) Formal requisites of financing statement - Amendments -**
22 **Mortgage as financing statement.**

- 23 1. A financing statement is sufficient if it gives the names of the debtor and the
24 secured party, is signed by the debtor, gives an address of the secured party from

1 which information concerning the security interest may be obtained, gives a
2 mailing address of the debtor, and contains a statement indicating the types, or
3 describing the items, of collateral; except a financing statement that is to be filed to
4 gain protection under the central notice system must include a reasonable
5 description of the property, including the county in which the property is located,
6 and any other additional information required by the Food Security Act of 1985
7 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of
8 state. The secretary of state shall prescribe one form that can be used to perfect a
9 security interest in farm products or gain protection under the central notice
10 system, or both. In addition, to be sufficient a financing statement filed after July 1,
11 1987, must include either the social security number or federal tax identification
12 number of the debtor. A financing statement may be filed before a security
13 agreement is made or a security interest otherwise attaches. ~~When the financing~~
14 ~~statement covers crops growing or to be grown, the statement must also contain a~~
15 ~~description of the real estate concerned.~~ When the financing statement covers
16 timber to be cut or covers minerals or the like (including oil and gas) or accounts
17 subject to subsection 5 of section 41-09-03, or when the financing statement is
18 filed as a fixture filing (section 41-09-34), and the collateral is goods which are or
19 are to become fixtures, the statement must also comply with subsection 5. A copy
20 of the security agreement is sufficient as a financing statement if it contains the
21 above information and is signed by the debtor. A carbon, photographic, or other
22 reproduction of a security agreement or a financing statement is sufficient as a
23 financing statement if the security agreement so provides or if the original has
24 been filed in this state.

- 25 2. A financing statement that otherwise complies with subsection 1 is sufficient when
26 it is signed by the secured party instead of the debtor if it is filed to perfect a
27 security interest in:
- 28 a. Collateral already subject to a security interest in another jurisdiction when it
29 is brought into this state, or when the debtor's location is changed to this
30 state. The financing statement must state that the collateral was brought into

- 1 this state or that the debtor's location was changed to this state under such
2 circumstances;
- 3 b. Proceeds under section 41-09-27 if the security interest in the original
4 collateral was perfected. Such a financing statement must describe the
5 original collateral;
- 6 c. Collateral as to which the filing has lapsed; or
- 7 d. Collateral acquired after a change of name, identity, or corporate structure of
8 the debtor (subsection 7).
- 9 3. A form substantially as follows is sufficient to comply with subsection 1:
- 10 Name of debtor (or assignor) _____
- 11 Address _____
- 12 Debtor's social security number or federal tax
13 identification number _____
- 14 Name of secured party (or assignee) _____
- 15 Address _____
- 16 a. This financing statement covers the following types (or items) of property:
17 (Describe) _____
- 18 b. ~~(If collateral is crops) The above described crops are growing or are to be~~
19 ~~grown on:~~
20 ~~(Describe real estate) _____~~
- 21 e. (If applicable) The above goods are to become fixtures on:
22 (Describe real estate) _____
- 23 and this financing statement is to be filed for record in the real estate records.
24 (If the debtor does not have an interest of record.) The name of a record
25 owner is _____.
- 26 ~~e.~~ c. (If products of collateral are claimed)
27 Products of the collateral are also covered.
28 (use) _____
29 whichever) Signature of Debtor (or Assignor)
30 is) _____
31 applicable)) Signature of Secured Party

(or Assignor)

4. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.
5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or a financing statement filed as a fixture filing (section 41-09-34) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.
6. A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:
 - a. The goods are described in the mortgage by item or type;
 - b. The goods are or are to become fixtures related to the real estate described in the mortgage;
 - c. The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
 - d. The mortgage is duly recorded.No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.
7. A financing statement sufficiently shows the name of the debtor if it gives the individual, limited liability company, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes ~~his~~ the debtor's name, or in the case of an organization, its

- 1 name, identity, or corporate structure that a filed financing statement becomes
2 seriously misleading, the filing is not effective to perfect a security interest in
3 collateral acquired by the debtor more than four months after the change, unless a
4 new appropriate financing statement is filed before the expiration of that time. A
5 filed financing statement remains effective with respect to collateral transferred by
6 the debtor even though the secured party knows of or consents to the transfer.
- 7 8. A financing statement substantially complying with the requirements of this section
8 is effective even though it contains minor errors which are not seriously
9 misleading.
- 10 ~~9. A financing statement covering crops growing or to be grown must show that it~~
11 ~~covers crops and where the debtor is not a transmitting utility the financing~~
12 ~~statement must contain a description of the real estate sufficient if it were~~
13 ~~contained in a mortgage of the real estate to give constructive notice of the~~
14 ~~mortgage under the law of this state.~~
- 15 10. A financing statement filed to gain protection under the central notice system must
16 be amended within three months of a material change to reflect that change. The
17 amended financing statement must be signed by both the debtor and secured
18 party and filed in the same manner as the original financing statement.