

# PROPERTY

## CHAPTER 387

### HOUSE BILL NO. 1424

(Representatives Martinson, C. Johnsen)

(Senator Kringstad)

## MODIFICATION OF COVENANTS

AN ACT to create and enact a new section to chapter 47-04 of the North Dakota Century Code, relating to modification of covenants running with the land.

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

**SECTION 1.** A new section to chapter 47-04 of the North Dakota Century Code is created and enacted as follows:

**Modification of covenants running with the land.** A covenant running with the land executed after the effective date of this Act must contain provisions addressing the modification of the covenant. If a covenant running with the land does not contain provisions relating to the modification of the covenant, eighty-five percent of all of the owners of the real property subject to the covenant may agree, in writing, to amend the covenant to include provisions relating to the modification of the covenant. Following approval of any modification, the modified covenant must be filed for recording with the register of deeds. This section does not apply to subdivisions that are not completed unless the subdivision has been in development for over fifteen years.

Approved March 23, 1997  
Filed March 24, 1997

## CHAPTER 388

### HOUSE BILL NO. 1250

(Representatives Oban, Carlisle)  
(Senators B. Stenehjem, Mutzenberger)

## MOBILE HOME STORM SHELTER RESPONSIBILITY

AN ACT to amend and reenact section 47-06-04.1 of the North Dakota Century Code, relating to the maintenance responsibilities of mobile home storm shelter owners.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 47-06-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-06-04.1. Mobile home storm shelters - Placement and transfer of ownership.**

1. Upon approval of the mobile home park owner, the owner of a mobile home located in the park may construct a storm shelter in the mobile home park. The approval ~~shall~~ must be in writing and ~~shall set forth~~ must include the type, location, and use of the shelter, and ~~shall also include~~ include an agreement between the park owner and the mobile home owner concerning ownership and maintenance of the shelter.
2. Notwithstanding section 47-06-04, the agreement between the owner of the mobile home and the park owner ~~shall~~ must provide that the owner of the mobile home is the owner of the shelter and may remove the shelter provided the land is returned to its original condition during any time that person owns the mobile home.
3. The shelter owner may ~~also~~ transfer ownership of the shelter to either a person who purchases the mobile home or to the mobile home park owner. The transfer must be in writing; must include the type, location, and use of the shelter; must include the maintenance responsibilities of the parties; and must be signed by both parties. If a mobile home owner transfers the shelter to a purchaser of the mobile home, the terms of the transfer must be the same as the terms of the agreement between the park owner and the mobile home owner required under subsection 1.
  - a. If a suitable price cannot be agreed upon with the mobile home park owner, the shelter owner is deemed to have transferred the ownership and maintenance responsibilities of the shelter to the park owner without cost, unless the shelter is removed or the shelter is transferred to a purchaser of the mobile home as provided in this section.
  - b. If the park owner is unwilling to assume ownership of the shelter, ~~he~~ the park owner may require the mobile home owner to remove the shelter and return the land to its original condition.

4. The park owner ~~shall~~ is not ~~be~~ liable for any injury or damages ~~which~~ that may occur to the mobile home owner as a result of the installation or use of the mobile home storm shelter.
5. All shelters must meet with the approval of local governing bodies.

Approved March 13, 1997

Filed March 13, 1997

## CHAPTER 389

### SENATE BILL NO. 2179

(Senators Nething, Thompson, Yockim)  
(Representatives Byerly, D. Johnson, Kerzman)

## INTEREST ON LATE PAYMENTS

AN ACT to amend and reenact section 47-14-05 of the North Dakota Century Code, relating to late payment penalties.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 47-14-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-14-05. Legal rate of interest - Interest after maturity.** Interest for any legal indebtedness ~~shall~~ must be at the rate of six percent per annum unless a different rate not to exceed the rate specified in section 47-14-09 is contracted for in writing. All contracts ~~shall~~ must bear the same rate of interest after maturity as they bear before maturity, and any contract attempting to make the rate of interest higher after maturity ~~shall be~~ is void as to ~~such~~ the increase of interest, except for a charge for late payment penalty charged in addition to interest which may not exceed fifteen dollars or fifteen percent of the late payment, whichever is less, unless otherwise agreed to in ~~the~~ any commercial, agricultural, or real estate note or mortgage.

Approved March 19, 1997  
Filed March 19, 1997

## CHAPTER 390

### HOUSE BILL NO. 1344

(Representatives Stenehjem, DeKrey, Delmore)  
(Senators Grindberg, Watne)

## LANDLORD LIEN IN ABANDONED PROPERTY

AN ACT to amend and reenact section 47-16-30.1 of the North Dakota Century Code, relating to a lessor's rights in abandoned property.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 47-16-30.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-16-30.1. Abandoned property - Disposal by lessor.** Property with a total estimated value of not more than one thousand five hundred dollars which is left on the premises of a leased dwelling thirty days after the tenant has vacated the premises after the expiration of the lease term may be retained by the lessor and disposed of without legal process. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property. If the lessor removes the abandoned property from the dwelling unit after a judgment of eviction has been obtained and the special execution has been served, the lessor has a lien upon the property for the reasonable amount of any storage and moving expenses and may retain possession of the property until the charges have been paid. The lien does not have priority over a prior perfected security interest in the property.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 391

### SENATE BILL NO. 2238

(Senators Thompson, W. Stenehjem)  
(Representatives Mahoney, Poolman)

## PERFORMING RIGHTS SOCIETIES

AN ACT relating to performing rights societies.

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

**SECTION 1. Definitions.** As used in this Act:

1. "Copyright laws of the United States" means those laws specified pursuant to title 17 of the United States Code [Pub. L. 94-553; 17 U.S.C. 101 et seq.].
2. "Copyright owner" means the owner of a copyright of a musical work other than a motion picture or other audiovisual work or part of a motion picture or other audiovisual work, which is recognized and enforceable under the copyright laws of the United States.
3. "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, including the American Society of Composers, Authors, and Publishers; Broadcast Music, Incorporated; and SESAC, Incorporated.
4. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not for-profit organization, or any other place of business or professional office located in this state in which the public may assemble and in which musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public in that place.
5. "Royalties" means the license fees payable by a proprietor to a performing rights society for the nondramatic public performance of musical works.

**SECTION 2. Notice and information.** A performing rights society may not enter, or offer to enter, a contract for the payment of royalties by a proprietor unless it agrees to provide to the proprietor upon request at the proprietor's place of business, by electronic means or otherwise, information as to whether specific copyrighted musical works are in its repertoire and the opportunity to review the most current available list of the performing rights society's members or affiliates.

**SECTION 3. Contract requirements.** Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued, or renewed in this state must be signed by both parties to the contract and must include the following information:

1. The proprietor's name and business address and the name and location of each place of business to which the contract applies;

2. The name and business address of the performing rights society;
3. The duration of the contract; and
4. The schedule of rates and terms of royalties to be collected under the contract, including any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

**SECTION 4. Prohibited conduct.** A performing rights society, or any agent, employee, or representative of a performing rights society, may not:

1. Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or the proprietor's employees, without first providing identification to the proprietor or the proprietor's employees, providing photographic identification from the society if requested, and making known to the proprietor or the proprietor's employees the purpose of the discussion or inquiry;
2. Engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;
3. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or
4. Fail to comply with or fulfill the obligations imposed by sections 2 and 3 of this Act. However, this Act does not prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the copyright laws of the United States.

**SECTION 5. Remedies.** Any person suffering a violation of this Act has a claim for relief to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available.

**SECTION 6. Application.** This Act does not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission or to contracts with cable operators, programmers, or other transmission services. In addition, this Act does not apply to musical works performed in synchronization with an audiovisual film or tape. This Act does not apply to investigations by law enforcement officers or other persons concerning a suspected violation of section 47-21.1-03.

Approved April 2, 1997  
Filed April 3, 1997

## CHAPTER 392

### HOUSE BILL NO. 1113

(Industry, Business and Labor Committee)  
(At the request of the Secretary of State)

### SIMILAR TRADE NAME USE

AN ACT to amend and reenact section 47-25-03 of the North Dakota Century Code, relating to the consent to use a similar trade name.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 47-25-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**47-25-03. Trade name - Nature.** No trade name registered may be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company, or a name of any limited partnership authorized to do business in this state, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

Approved February 11, 1997  
Filed February 11, 1997



## CHAPTER 393

### SENATE BILL NO. 2327

(Senators Mutch, Schobinger, Thompson)  
(Representatives Berg, Froseth, Glassheim)

## UNCLAIMED PROPERTY ACT DEFINITIONS

AN ACT to amend and reenact subsection 9 of section 47-30.1-01 and section 47-30.1-14 of the North Dakota Century Code, relating to gift certificates and the definition of intangible property under the Uniform Unclaimed Property Act.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 9 of section 47-30.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Intangible property" includes:
  - a. Moneys, checks, drafts, deposits, interest, dividends, and income.
  - b. Credit balances, customer overpayments, ~~gift certificates~~, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.
  - c. Stocks and other intangible ownership interests in business associations.
  - d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
  - e. Amounts due and payable under the terms of insurance policies.
  - f. Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.
  - g. Amounts distributable from a mineral interest in land.

**SECTION 2. AMENDMENT.** Section 47-30.1-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **47-30.1-14. ~~Gift certificates and credit~~ Credit memos.**

1. A ~~gift certificate~~ or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

2. ~~In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate.~~ In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

Approved March 25, 1997

Filed March 26, 1997