

FIRST ENGROSSMENT
with House AmendmentsSixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2277

Introduced by

Senator Holmberg

1 A BILL for an Act to amend and reenact sections 28-23-01, 28-23-02, 28-23-04, 28-23-05,
2 28-23-06, 28-23-07, 28-23-09, 28-23-11, 28-23-12, 28-23-13, and 28-23-14 of the North Dakota
3 Century Code, relating to sales under execution.

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

5 **SECTION 1. AMENDMENT.** Section 28-23-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **28-23-01. Sale of personal property - Notice of sale.** The officer who levies upon
8 personal property, other than crops or perishable property, ~~by virtue of an execution, before the~~
9 ~~officer proceeds to sell the same,~~ shall cause give public notice ~~to be given~~ of the time and
10 place of ~~such the~~ sale by advertisement published once each week for two successive weeks
11 next before the day of sale; in ~~some the county's official~~ newspaper ~~printed in the county, such~~
12 ~~newspaper to be designated by the judgment creditor or the judgment creditor's attorney, or, in~~
13 ~~case no newspaper is published therein, by posting advertisements in five public places in the~~
14 ~~county.~~

15 **SECTION 2. AMENDMENT.** Section 28-23-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **28-23-02. Sale of crops.** If the levy is upon ~~crops, when harvested, such~~ crops, at the
18 option of the judgment creditor, the crops may be sold in the nearest usual market ~~therefor for~~
19 crops, at any time; after such levy, ~~in the usual manner,~~ at the market price ~~thereof in such~~
20 ~~market and~~ without publishing ~~or posting~~ notice of sale. In that case, ~~however,~~ the notice of
21 levy; or a subsequent notice to be served as the notice of levy is served; must state where and
22 when ~~such the~~ crops will be sold. Should the judgment debtor, or the judgment debtor's agent
23 or attorney, at the time ~~such the~~ levy is made, give notice to the officer making the levy that the
24 judgment debtor intends to settle the judgment, the officer shall hold the grain six days before

1 making sale ~~thereof~~ of the grain. The usual and reasonable charges for the sale and
2 transportation of ~~such~~ the grain to market must be deemed proper expenses chargeable as
3 costs in ~~such~~ the proceedings, and in case the notice above provided for is served on the
4 officer there also must be chargeable reasonable charges for storing ~~said~~ the grain.

5 **SECTION 3. AMENDMENT.** Section 28-23-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **28-23-04. Sale of real property - Notice of sale - Contents.**

8 1. Before any real property or interest ~~therein~~ in real property taken on execution may
9 be sold, the officer making the sale shall give public notice of the time and place of
10 the sale:

11 ~~4.~~ If a newspaper is printed in the county where the real property to be sold is
12 situated, ~~the notice must be given~~ by advertisement in a the county's official
13 newspaper ~~printed in the county~~ once a week for three successive weeks, the last
14 publication to be at least ten days ~~prior to~~ before the making of the sale; ~~and.~~

15 ~~2.~~ In case no newspaper is printed in the county, then the officer making the sale
16 shall cause the advertisement to be made by posting a copy of the advertisement
17 on the outer door of the courthouse or building where the district court of the
18 county was last held, and in five other public places in the county.

19 Except for parties who have an ownership interest in the real property ~~subject to~~
20 ~~foreclosure of a mortgage under chapter 32-19~~, the names of all defendants may be omitted
21 from the public notice. If the names of the nonowner defendants are omitted, a copy of the
22 public notice must be mailed to all defendants whose names are omitted at least ten days ~~prior~~
23 ~~to~~ before the date of the sale. Service by mail is complete upon mailing. All sales made
24 without notice as provided in this section must be set aside by the court to which the execution
25 is returnable, upon motion to confirm the sale.

26 **SECTION 4. AMENDMENT.** Section 28-23-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **28-23-05. Where sale of real property made.** All sales of real property; or any
29 interest ~~therein~~, in real property under execution; must be held ~~at the courthouse, if there is one~~
30 in the county in which ~~such~~ the real property is situated, ~~and if there is no courthouse, then at~~
31 ~~the door of the house in which the district court was last held, and if there is no courthouse and~~

1 ~~no district court has been held in the county, then or at such a~~ place within the county as the
2 sheriff ~~shall designate~~ designates in the ~~sheriff's~~ notice of sale, or the place designated in the
3 published notice of sale if the foreclosure is by advertisement.

4 **SECTION 5. AMENDMENT.** Section 28-23-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-23-06. Place of sale of personal property.** If the owner of the personal property
7 levied on, other than crops, agrees to keep ~~such~~ the property safely until the day of sale and
8 requests that the sale be held on the premises where the property is seized, the sale must be
9 held on the premises where the property is seized. Otherwise the sale may be had at the place
10 designated by the sheriff in the notice of sale. ~~This provision also applies in case of foreclosure~~
11 ~~by advertisement.~~

12 **SECTION 6. AMENDMENT.** Section 28-23-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **28-23-07. Time and manner of sale.** All sales of property under execution must be
15 made at public auction to the highest bidder, between the hours of nine a.m. and four p.m.
16 After sufficient property has been sold to satisfy the execution, no more property may be sold.
17 ~~No A~~ A sheriff or other officer, ~~nor a or the~~ or the sheriff's or officer's deputy, holding the execution or
18 making the sale of property, ~~either personal or real,~~ may not become a purchaser or be
19 interested directly or indirectly in any purchase at ~~such the~~ the sale, ~~and every.~~ A purchase so
20 made must be considered fraudulent and void. ~~When~~ If the sale is of personal property
21 capable of manual delivery, it must be within view of those who attend the sale and must be
22 sold in ~~such~~ such parcels as are likely to bring the highest price, and when the sale is of real
23 property consisting of several known lots or parcels they must be sold separately unless they
24 constitute one parcel on which improvements have been constructed. The judgment debtor, if
25 present at the sale, may direct the order in which property, ~~real or personal,~~ must be sold, ~~when~~
26 ~~such~~ if the property consists of several known lots or parcels or of articles which can be sold to
27 advantage separately, ~~and the.~~ The sheriff or other officer shall follow ~~such~~ these directions.

28 **SECTION 7. AMENDMENT.** Section 28-23-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **28-23-09. Surplus paid judgment debtor.** ~~When~~ Except for real estate foreclosure
31 sales if the property sells for more than the amount required to be collected, the surplus must

be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

SECTION 8. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

28-23-11. Purchaser's right - Sheriff's certificate.

1. Upon a sale of real property, the purchaser is substituted for the judgment debtor and acquires all the right, title, interest, and claim of ~~such the~~ debtor to ~~such the~~ property, ~~and when.~~ If the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this title. The officer shall give to the purchaser a certificate of sale containing:
 - ~~1- A particular~~ a description of the real property sold;
 - ~~2- A~~ a statement of the price bid for each distinct lot or parcel;
 - ~~3- A~~ a statement of the whole price paid; ~~and~~
 - ~~4- When subject to the period of redemption, a statement to that effect; and the name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.~~
- ~~2. Such certificate must be executed by the~~ The officer shall execute the certificate and ~~acknowledged~~ acknowledge or prove ~~prove the certificate as may be required by law~~ for deeds of real property.

SECTION 9. AMENDMENT. Section 28-23-12 of the North Dakota Century Code is amended and reenacted as follows:

28-23-12. Recording of sheriff's certificate required - Evidence. The sheriff's certificate of sale must be recorded in the office of the recorder of the county ~~wherein~~ in which the real property is situated; within ~~sixty~~ ten days from the date of sale. ~~Such~~ The sheriff's certificate or a certified copy ~~thereof~~ of the certificate certified by ~~such the~~ recorder must be taken and deemed evidence of the facts ~~therein recited and contained~~ in the certificate.

SECTION 10. AMENDMENT. Section 28-23-13 of the North Dakota Century Code is amended and reenacted as follows:

28-23-13. Proceedings upon confirmation. If the court, upon the return of any execution for the satisfaction of which any real property or interest ~~therein~~ in real property has

1 been sold, after having carefully examined the proceedings of the officer, is satisfied that the
2 sale has been made in all respects in conformity to the provisions of this chapter, the court shall
3 make an order confirming the sale and directing the clerk to make an entry on the journal that
4 the court is satisfied of the legality of ~~such the~~ the sale; and an order that the officer make to the
5 purchaser a deed of ~~such the~~ the real property; or interest ~~therein, in the real property~~ at the
6 expiration of ~~one year from the day of sale~~ the redemption period unless the ~~same~~ property is
7 redeemed. The officer ~~after making such sale~~ may retain the purchase money ~~in the officer's~~
8 ~~hands~~ until the court ~~has examined the officer's proceedings as aforesaid~~ confirms the sale,
9 ~~when then~~ the officer shall pay the ~~same~~ money to the person entitled ~~thereto~~ to the money by
10 order of the court.

11 **SECTION 11. AMENDMENT.** Section 28-23-14 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-23-14. Reversal does not defeat sale.** If any judgment, in satisfaction of which
14 any real property is sold, is reversed ~~at any time thereafter, such the~~ the reversal does not defeat
15 nor affect the title of the purchaser, but ~~in such case,~~ restitution must be made by the judgment
16 creditor of the money ~~for which such real property was sold~~ received from the sale, with legal
17 interest ~~thereon~~ on the money from the day of sale.