

June 2009

TITLE 47

Property

Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 47. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

Senate Bill No. 2250 adds construction liens to liens to which a homestead is subject to execution or forced sale in satisfaction of judgments.

House Bill No. 1301 provides for manufactured homes to be treated as real property when permanently affixed to real property.

Senate Bill No. 2171 allows for the termination of a residential lease by a victim of domestic violence. In addition, the bill provides that the tenant is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate.

House Bill No. 1039 increases the homestead exemption from \$80,000 to \$100,000 and defines contiguous for the purposes of defining the lots and tracts of a homestead to include two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way. In addition, the bill limits the protection of the proceeds of a forced sale of a homestead for a period of one year from the date of the conveyance.

Senate Bill No. 2176 allows when a lease in real property is terminable at the pleasure of one of the parties, the surviving lessee or the estate of the decedent who was a lessee of real property for residential purposes to terminate the lease on the last day of the month in the month following the death of the lessee unless the lease term expires before that time.

Senate Bill No. 2234 changes the instruments that are entitled to be recorded without acknowledgment to an instrument issued by a governmental entity, an instrument certified by a governmental entity, a lis pendens or other instrument that is signed by an attorney at law and bears the attorney's identification number, an affidavit that bears a jurat or verification upon oath or affirmation, a Uniform Commercial Code financing statement, or a plat signed by a land surveyor.

House Bill No. 1042 creates a new chapter relating to eviction that was previously located in Title 33.

House Bill No. 1045 removes the right of taking game from land burdens or servitudes upon land that may be attached to other land as incidents or appurtenances and then are called easements and removes the same from servitudes upon land that may be granted and held but do not attach to the land.

Senate Bill No. 2235 deems a lender contacted at the last-known address that does not refuse or approve of proposed amendments to condominium bylaw amendments to have approved the amendments, notwithstanding any requirement to the contrary in the condominium declaration or bylaws. In addition, the bill is limited to proposed amendments that do not affect the lender's right to enforce the terms of the mortgage.

House Bill No. 1137 lists requirements needed for an agreement with an owner of unreported unclaimed property to locate, deliver, recover, or assist in the recovery of property and includes that the agreement must be in writing, list the nature of the property, describe the services, state the value of the property, describe the fee, be signed by the apparent owner, state that the person could recover the property without charge from the state-administered program, and provide contact information for the state-administered unclaimed property program.

House Bill No. 1156 requires a security deposit that remains unclaimed for more than one year to be presumed abandoned and changes the types of security deposit from a deposit made by a subscriber of a utility to a deposit made in advance by a person to secure an agreement for rights or services.

House Bill No. 1232 allows two persons to be joint custodians for property of a minor and presumes that each joint custodian may act alone with respect to the custodial property and if either joint custodian is no longer a custodian, then the remaining joint custodian becomes the sole custodian under the Uniform Transfers to Minors Act.

Senate Bill No. 2282 requires a franchisee to provide certain information to the Secretary of State to use a licensed trade name and that information includes the name and address of the franchisee, the trade name licensed to the franchisee, the address of each place of business that will display the unregistered trade name, the name and address of the franchisor or other licensor, and any other additional required information. In addition, the bill provides that a trade name licensed to a franchisee which is not registered is not entitled to any trade name protection. In addition, the bill provides for an amendment to trade name registration and for a cancellation of any registration with the Secretary of State by the personal representative of the registrant's estate.

Senate Bill No. 2233 allows a change in the name or identity of a corporate mortgagee or an assignee of the mortgagee to be specified in the body of the instrument the merger, consolidation, amendment, or conversion causing the change in the name or identity to be in recordable form, to be prima facie evidence that the facts stated in it with respect to the merger, consolidation, amendment, or conversion, and for the county recorder to rely upon it to assign, satisfy, or release the mortgage. In addition, the bill requires an assignment, satisfaction, or release to be recorded in the office of the county recorder and makes that document sufficient if the assignment, satisfaction, or release is in recordable form, is executed by the mortgagee or the third party, or a mortgage is granted to a mortgagee as nominee or agent for a third party identified in the mortgage. The bill requires the county recorder to rely upon the preceding to assign, satisfy, or release the mortgage. The bill applies to any mortgage assignment, satisfaction, or release executed, recorded, or filed at any time.

Senate Bill No. 2236 creates a presumption that the trustee of a trust that holds title to real property and may sell, convey, and encumber the property unless restrictions on that power appear in the records of the county recorder.

Senate Bill No. 2139 vests in the owner of the overlying surface estate title to pore space and all strata underlying the surface of lands and waters and provides that conveyance of title to the surface of real property conveys the pore space and that pore space may not be severed from the title to the surface.

House Bill No. 1071 adds the situation in which an operator fails to pay oil or gas royalties to an unleased mineral interest owner within 150 days from initial oil or gas production from the unleased mineral owner's mineral interests within the requirement that the interest on unpaid royalties is 18 percent per annum until paid. In addition, the bill provides that this does not apply when a mineral owner cannot be located after reasonable inquiry by the operator.