

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1191

Introduced by

Representatives Maragos, Delmore

Senators Laffen, Nelson

1 A BILL for an Act to provide for security interests in rents.

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

3 **SECTION 1.**

4 **Security interest rates.**

- 5 1. A document, however denominated, that is enforceable and creates or provides for a
6 security interest in real property, whether or not it also creates or provides for a
7 security interest in personal property, creates an assignment of rents arising from the
8 real property described in the document, unless the document provides otherwise.
9 2. An assignment of rents creates a presently effective security interest in all accrued
10 and unaccrued rents arising from the real property described in the document creating
11 the assignment, whether the document is denominated an absolute assignment, an
12 absolute assignment condition upon default, an assignment as additional security, or
13 otherwise. The security interest in rents is separate and distinct from any security
14 interest held by the assignee in the real property.

15 **SECTION 2.**

16 **Cash proceeds - Priority.**

- 17 1. An assignee's security interest in identifiable cash proceeds is perfected if its security
18 interest in rents is perfected. An assignee's security interest in identifiable noncash
19 proceeds is perfected only if the assignee perfects that interest in accordance with
20 chapter 41-09.
21 2. Except as otherwise provided in subsection 3, priority between an assignee's security
22 interest in identifiable proceeds and a conflicting interest is governed by the priority
23 rules in chapter 41-09.

- 1 3. An assignee's perfected security interest in identifiable cash proceeds is subordinate
2 to a conflicting interest that is perfected by control under chapter 41-09 but has priority
3 over a conflicting interest that is perfected other than by control.

4 **SECTION 3.**

5 **Perfection of security interest in rents.**

- 6 1. A document creating an assignment of rents may be submitted for recording in the
7 office of the recorder for the county in which the real property described in the
8 document is located in the same manner as any other document evidencing a
9 conveyance of an interest in real property.
- 10 2. Upon recording, the security interest in rents created by an assignment of rents is fully
11 perfected, notwithstanding any provision of the document creating the assignment or
12 other law of this state which would preclude or defer enforcement of the security
13 interest until the occurrence of a subsequent event, including a subsequent default of
14 the assignor, the assignee's obtaining possession of the real property, or the
15 appointment of a receiver.
- 16 3. Except as otherwise provided in subsection 4, a perfected security interest in rents
17 takes priority over the rights of a person who, after the security interest is perfected,
18 acquires an interest in or judgment lien against the rents or the real property from
19 which they arise.
- 20 4. A perfected security interest in rents has priority over the rights of a person listed in
21 subsection 3 with respect to future advances to the same extent as the assignee's
22 security interest in the real property has priority over the rights of that person with
23 respect to future advances.

24 **SECTION 4.**

25 **Enforcement of security interest in rents.**

- 26 1. An assignee may enforce an assignment of rents using any method sufficient to
27 enforce the assignment under law of this state, including notice to the assignor, notice
28 to the tenant, and the appointment of a receiver.
- 29 2. From the date of enforcement, the assignee or, in the case of enforcement by
30 appointment of a receiver, the receiver is entitled to collect all rents that have accrued
31 but remain unpaid on that date and accrue on or after that date, as those rents accrue.

1 **SECTION 5.**

2 **Application to existing relationships.**

- 3 1. Except as otherwise provided in this section, this Act governs the enforcement of an
4 assignment of rents and the perfection and priority of a security interest in rents, even
5 if the document creating the assignment was signed and delivered before August 1,
6 2013.
- 7 2. This Act does not affect an action or proceeding commenced before August 1, 2013.
- 8 3. This Act does not affect:
- 9 a. The enforceability of an assignee's security interest in rents or proceeds if
10 immediately before August 1, 2013, that security interest was enforceable;
- 11 b. The perfection of an assignee's security interest in rents or proceeds if
12 immediately before August 1, 2013, that security interest was perfected; or
- 13 c. The priority of an assignee's security interest in rents or proceeds with respect to
14 the interest of another person if immediately before August 1, 2013, the interest
15 of the other person was enforceable and perfected, and that priority was
16 established.