

LIENS

CHAPTER 277

S. B. No. 132
(Chesrown, Longmire)

DISPOSITION OF MORTGAGED PROPERTY

AN ACT

To amend and reenact section 35-01-26 of the North Dakota Century Code, relating to the sale or disposition of mortgaged property.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 35-01-26 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-01-26. Destroying, Concealing, Selling Property Subject to Lien—Penalty.) Every person having in his possession or under his control any personal property upon which there is known to him to be a subsisting lien or security interest, by contract, or by operation of law, who willfully destroys, conceals, sells or in any manner disposes of such property or any part thereof otherwise than as prescribed by law, or by the security agreement or materially injures the same without the written consent of the holder of the lien or the secured party, is guilty of a misdemeanor if the value of the property does not exceed one thousand dollars, and is guilty of a felony if the value of the property exceeds one thousand dollars.

Approved March 1, 1967.

CHAPTER 278

H. B. No. 784
(Unruh, Schaffer, Olienyk)

SPECIAL LIENS

AN ACT

To amend and reenact section 35-20-11 of the North Dakota Century Code, providing a summary method for foreclosure of special liens.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 35-20-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-20-11. Lien for Repair, Improvement, Carriage, Protection, Safekeeping of Personalty.) Every person, excepting those entitled to a specific lien under other chapters of this title, who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the repair, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. In addition to other remedies available for the enforcement of liens, the holder of such special lien may foreclose the same and acquire ownership in himself of such article of personal property provided the holder of such a special lien has obtained the address of the owner at the time such article was left, by:

1. Causing a notice of intention to foreclose such special lien to be sent to the owner thereof, by registered or certified mail, to the address obtained from such owner at the time such article is left, which notice shall be in substantially the following form:

To....., owner of (describe the article upon which lien is claimed.)

You are hereby notified that the undersigned claims a special lien upon the above-described article by virtue of section 35-20-11, North Dakota Century Code; and hereby further advises you of his intention to foreclose such special lien and acquire ownership of such article, unless the sum of (insert amount claimed) is paid within sixty days from the date hereof; or unless you shall

notify the undersigned within such period of your election to challenge the amount claimed due for services rendered thereon.

Dated

(Party claiming lien)

2. If, at the expiration of sixty days from the date of mailing such notice, payment shall not have been received of the amount claimed to be due, or an election to challenge the amount due has been received, the lien claimant shall be deemed to have succeeded to ownership of the article of personal property upon which the special possessory lien is claimed.

If the owner of such property shall cause an election to challenge the amount claimed to be delivered to the lien holder, then the summary foreclosure procedure set out herein shall not be available to the lien claimant; and the lien must be foreclosed by action.

Approved March 10, 1967.

CHAPTER 279

S. B. No. 119

(Wilhite, Freed, Longmire, Melland)

SHORT-TERM MORTGAGE REDEMPTION ACT

AN ACT

To permit an alternative procedure for foreclosure of a real estate mortgage when so permitted by the terms of said mortgage.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Mortgage May Provide for Foreclosure Under Act.)

The parties to a real estate mortgage upon property involving an area not to exceed three acres, which contains therein a power of sale, may provide in said mortgage that upon default in the conditions of the mortgage, the mortgage may be foreclosed as provided in this Act.

§ 2. Procedure Where Not Covered by Act.) Where not inconsistent with the provisions of this Act, the procedure for foreclosure set forth in the laws of the state of North Dakota as now enacted or hereinafter amended shall apply and be followed in any foreclosure hereunder.

§ 3. Wording To Be Contained in Mortgage.) This Act may be cited as the "Short-term Mortgage Redemption Act" and shall not apply to any mortgage which does not contain the following wording or its equivalent: "The parties agree that the provisions of the Short-term Mortgage Redemption Act shall govern this mortgage". Any mortgage executed under this Act shall also contain in its title in printed or typed bold-face capital letters: "Mortgage-Short-term Mortgage Redemption".

§ 4. Redemption Period Under Act.) All real property sold as provided in section 32-19-08 of the North Dakota Century Code upon foreclosure of a mortgage executed pursuant to this Act may be redeemed within the time period specified in this Act and in such manner as is prescribed by chapter 28-24 of the title Judicial Procedure, Civil. The period of redemption under this Act shall be as follows:

1. If the amount claimed due upon such mortgage at the date of the notice before foreclosure is more than 66 $\frac{2}{3}$ percent of the original indebtedness secured by the mortgage, the redemption period shall be six months.
2. In any other case, the redemption period shall be one year.

§ 5. Notice Before Foreclosure to State Time for Redemption.) When the notice before foreclosure required by section 32-19-20 of the North Dakota Century Code is served upon the title owner of record of the real estate described in the mortgage, such notice shall, where foreclosure is authorized under this Act, contain a statement as to the time for redemption after the sheriff's sale. Failure to include such a statement in the notice shall invalidate the notice for any purpose.

§ 6. Recording of Affidavit of Amount Due Necessary Before Recording of Sheriff's Deed.) In the event of a foreclosure under this Act where authorized by the terms of the mortgage and by law, no register of deeds shall record a sheriff's deed until and unless there is first recorded an affidavit of the mortgagee or the attorney for said mortgagee showing the amount due upon said mortgage indebtedness at the time of the notice before foreclosure. When so recorded the same shall be accepted by all parties as conclusive proof of such indebtedness unless prior to the recording of the sheriff's deed an affidavit by any party is recorded which shall contradict the mortgagee or the attorney for such mortgagee as to the amount of indebtedness due, in which case the one-year redemption period shall apply if it shall appear from such counter-affidavit that less than 66 $\frac{2}{3}$ percent of the original indebtedness secured by the mortgage was due on the date of the notice before foreclosure.

§ 7. No Deficiency Judgment Allowed.) When any mortgage has been foreclosed under this Act, the mortgagee or any party claiming by, through, or under said mortgagee, shall not be entitled to any judgment for deficiency.

Approved February 23, 1967.

CHAPTER 280

H. B. No. 929

(Aafedt, Peterson(1))

UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

AN ACT

To provide for the filing of federal tax liens, releases, and notices thereof, and to make uniform the law with reference thereto.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Federal Tax Lien—Place of Filing.)

1. Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the register of deeds of the county in which the real property subject to a federal tax lien is situated.

2. Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

- a. If the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;
- b. In all other cases in the office of the register of deeds of the county where the taxpayer resides at the time of filing of the notice of lien.

§ 2. Execution of Notices and Certificates.) Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

§ 3. Duties of Filing Officer.)

1. If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection 2 is presented to the filing officer and

- a. He is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection 4 of section 41-09-42 (UCC 9-403) of the North Dakota Century Code as if the notice were a financing statement within the meaning of that code; or
- b. He is any other officer described in section 1 of this Act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director, and the total unpaid balance of the assessment appearing on the notice of lien.

2. If a certificate of release, non-attachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

- a. Cause a certificate of release or non-attachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files, and
- b. Cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

3. If a refiled notice of federal tax lien referred to in subsection 1 or any of the certificates or notices referred to in subsection 2 is presented for filing with any other filing officer specified in section 1, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

4. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate

is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is one dollar and twenty-five cents for each notice or certificate reported therein. Upon request, the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar, plus seventy-five cents for the second and each succeeding page.

§ 4. Tax Liens and Notices Filed Before Effective Date of This Act.) Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967 shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967 any certificate or notice affecting the lien shall be filed in the same office.

§ 5. Fees.)

1. The fee for filing and indexing each notice or lien or certificate or notice affecting the tax lien is:

- a. For a tax lien on real estate, one dollar and fifty cents;
- b. For a tax lien on tangible and intangible personal property, one dollar;
- c. For a certificate of discharge or subordination, there shall be no fee;
- d. For all other notices, including a certificate of release or non-attachment, there shall be no fee.

2. The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

§ 6. Uniformity of Interpretation.) This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 7. Short Title.) This Act may be cited as the Uniform Federal Tax Lien Registration Act.

§ 8. Repeal.) Sections 35-26-01, 35-26-02, 35-26-03, 35-26-04, and 35-26-05 of the North Dakota Century Code are hereby repealed.

§ 9. Time of Taking Effect.) This Act shall take effect July 1, 1967.

Approved February 23, 1967.