

JUDICIAL REMEDIES

CHAPTER 260

HOUSE BILL NO. 1515
(Atkinson)

CLAIM AND DELIVERY TO RECOVER PERSONAL PROPERTY

AN ACT to amend and reenact section 32-07-02 of the North Dakota Century Code, relating to claim and delivery to recover possession of personal property.

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

SECTION 1. AMENDMENT.) Section 32-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-07-02. PLAINTIFF'S AFFIDAVIT.) When a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in his behalf, stating:

1. That the plaintiff is the owner of the property claimed, particularly describing it, or lawfully is entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;
2. That the property is detained wrongfully by the defendant;
3. The alleged cause of the detention thereof according to his best knowledge, information, and belief;
4. That the property has not been taken for a tax, assessment, or fine pursuant to a statute, nor seized under an execution or attachment against the property of the plaintiff, or if so seized, that it by statute is exempt from such seizure;
5. The actual value of the property; and
6. That a court order has been issued authorizing delivery hereunder, and is attached,
 - a. pursuant to notice to defendant and hearing on an order to show cause, or
 - b. without notice to defendant if, in addition to satisfying the requirements for an order

to show cause, probable cause appears to the court that

- (1) the defendant gained possession of the property by theft or fraud;
- (2) the property consists of one or more negotiable instruments or credit cards;
- (3) the property is perishable and will be irreparably damaged before a hearing can be held; or
- (4) the property is in immediate danger of destruction, serious harm, concealment, or removal from the state, or of sale to an innocent purchaser.

Approved March 10, 1973

CHAPTER 261

SENATE BILL NO. 2368
(Freed, Iszler)

TRUSTEES FOR COMMERCIAL BUILDINGS
DURING FORECLOSURES

AN ACT to create trustees for commercial buildings during foreclosures.

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

SECTION 1. APPOINTMENT OF TRUSTEE.) On application of the mortgagee, in any action for the foreclosure of a real estate mortgage upon any commercial building, including apartments of five or more units, the court, upon ten days' notice to the mortgagor, may, upon good cause being shown, appoint a trustee to take possession of the premises. Any person, other than the mortgagee, its agents or employees, may act as trustee if the court deems them qualified.

SECTION 2. AUTHORITY AND DUTIES OF TRUSTEE.) The trustee shall:

1. Take possession of the premises.
2. Pay, to the extent funds are available, all utilities, taxes, and insurance.
3. Receive the rentals from tenants.
4. Remove tenants for nonpayment of rent or for any other cause permissible by law.
5. Rent premises.

SECTION 3. TERMINATION AND ACCOUNTING.) The appointment of a trustee shall continue until:

1. The expiration of the period of redemption;
2. The redemption of the premises by the mortgagor;
3. The voluntary dismissal of the foreclosure action; or
4. His removal by the court.

Within thirty days after the termination of his appointment, the

trustee shall file with the court a report of his activities and all receipts and expenditures, and shall serve a copy thereof on the mortgagor by certified or registered mail, an affidavit of service by mail being competent proof thereof. The trustee's account shall become final unless objected to within thirty days from the date of mailing to the mortgagor.

SECTION 4. COMPENSATION OF TRUSTEE AND DISTRIBUTION OF FUNDS.) Upon the trustee's account becoming final, the trustee shall pay all remaining funds, less his fee and expenses, to the mortgagor. The trustee shall be entitled to a fee as set by the court. All expenses incurred by the trustee in performing his duties hereunder shall be reimbursed out of available funds.

Approved March 19, 1973

CHAPTER 262

SENATE BILL NO. 2067
(Holand)

PETITION TO CHANGE NAME

AN ACT to amend and reenact section 32-28-02 of the North Dakota Century Code, relating to the procedures for changing a person's first name.

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

SECTION 1. AMENDMENT.) Section 32-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-28-02. CHANGE OF NAME OF PERSON - PETITION.) Any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth:

1. That the petitioner has been a bona fide resident of such county for at least six months prior to the filing of the petition;
2. The cause for which the change of the petitioner's name is sought; and
3. The name asked for.

The judge of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition and that there exists proper and reasonable cause for changing the name of the petitioner and that thirty days' previous notice of the intended application has been given in some newspaper printed in such district, shall order a change of the name of such petitioner and direct that such order be entered by the clerk in the journal of the court. The court, however, may waive publication of the notice hereinbefore required when the proposed change relates only to a first or given name as distinguished from a surname.

Approved February 1, 1973