

PROPERTY

CHAPTER 483

HOUSE BILL NO. 1095
(Erickson)

NONTESTAMENTARY TRANSFER PRESUMPTION

AN ACT to create and enact new sections to chapters 47-10 and 47-11 of the North Dakota Century Code, relating to a presumption that a nontestamentary transfer of real or personal property between spouses is always for a consideration, and not a gift, unless stated in writing; and setting out legislative intent.

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

SECTION 1.) A new section to chapter 47-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

A nontestamentary transfer of real property between spouses shall be presumed to be for a consideration, and not a gift, unless otherwise stated in writing at the time of transfer. This presumption is conclusive.

SECTION 2.) A new section to chapter 47-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

A nontestamentary transfer of personal property between spouses shall be presumed to be for a consideration, and not a gift, unless otherwise stated in writing at the time of transfer. This presumption is conclusive.

SECTION 3. LEGISLATIVE INTENT.) The legislative assembly intends that the provisions of sections 1 and 2 of this Act be in recognition of the contribution of spouses to the marital and familial relationship. It is not the intent of the legislative assembly that the provisions of sections 1 and 2 of this Act be utilized for evasion of a legal tax liability owed to the state of North Dakota, or to the United States government; but it is the intent of the legislative assembly that for purposes of chapter 57-37.1 equal monetary contribution or its equivalent to the acquisition of property held in joint tenancy by a husband and wife shall be presumed except that if House Bill No. 1156 as passed by the forty-sixth legislative assembly becomes effective this presumption shall not apply.

Approved March 26, 1979

CHAPTER 484

HOUSE BILL NO. 1209
(Strinden, Berge, Melby, Swiontek, Vander Vorst)

AGRICULTURAL LAND OWNERSHIP BY ALIENS

AN ACT to prohibit the sale of agricultural lands to nonresident aliens, to prohibit the recording of instruments of title for nonresident alien purchases of agricultural land, to provide for enforcement by the attorney general, and to require annual reports to the commissioner of agriculture; to amend and reenact section 47-01-11 of the North Dakota Century Code, relating to qualifications for private ownership of property; and to provide a penalty.

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

SECTION 1. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Agricultural land" means land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than, and nonconforming with, agricultural use, but does not include any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals.

2. "Interest in agricultural land" includes any leasehold interest.

SECTION 2. RESTRICTION ON ACQUISITION - EXCEPTIONS.) A person who is not a citizen of the United States or a citizen of Canada, except a permanent resident alien of the United States, may not acquire directly or indirectly any interest in agricultural land. A partnership, limited partnership, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or

otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this section. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.

SECTION 3. RECORDING.) A register of deeds in this state shall not record any instrument affecting title to, possession of, or interest in agricultural land where the acquiring person or business entity is in violation of section 2.

SECTION 4. ENFORCEMENT.) If the attorney general has reason to believe that any person is violating section 2, the attorney general shall commence an action in the district court in which any agricultural land relative to the violation is situated, or if situated in two or more counties, in the district court for that county in which a substantial part of the land is situated. The attorney general shall file for record with the register of deeds in each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of section 2, it shall enter an order so declaring. The attorney general shall file for record any such order with the register of deeds of each county in which any portion of the land is located. Thereafter, the person, partnership, limited partnership, trustee, or other business entity owning the land has a period of one year from the date of the order to divest itself of the lands. The one-year limitation period is deemed a covenant running with the title to the land against any grantee or assignee. Any land not divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law. No title to land shall be invalid or subject to forfeiture by reason of the alienage of any former owner or person having a former interest therein.

SECTION 5. REPORTS.) Any individual, partnership, limited partnership, trustee, or other business entity prohibited from future acquisition of agricultural land may retain title to any agricultural land within this state acquired prior to July 1, 1979, but it shall file a report with the commissioner of agriculture by October 1, 1979, and annually before July first thereafter, containing a description of all agricultural land held within this

state, the purchase price and market value of the land, the use to which it is put, the date of acquisition and any other reasonable information required by the commissioner. The commissioner shall make the information available to the public.

SECTION 6. PENALTY.) Willful failure to properly register any parcel of land as required by section 5; recording, with knowledge, of any instrument in violation of section 2; or any other failure to comply with the provisions of sections 1 through 5 is a class A misdemeanor.

SECTION 7. AMENDMENT.) Section 47-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-01-11. PRIVATE OWNERSHIP - PERSONS QUALIFIED - CITIZEN - ALIEN.) Any Except as provided in sections 1 through 6 of this Act, any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this state.

Approved April 7, 1979

CHAPTER 485

SENATE BILL NO. 2418
(Lodoen)

DEFINITION OF USURY

AN ACT to amend and reenact section 47-14-09 of the North Dakota Century Code, relating to the definition of usury, its prohibition and the maximum contract rate.

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

SECTION 1. AMENDMENT.) Section 47-14-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-14-09. USURY - DEFINITION - MAXIMUM CONTRACT RATE - PROHIBITION.) Except as otherwise provided by the laws of this state, no person, ~~co~~partnership partnership, limited partnership, trust, association, ~~or~~ corporation, or other form of business entity, either directly or indirectly, shall take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than ~~three~~ five and one-half percent per annum higher than the maximum rate of interest payable on time deposits maturing in thirty months as defined and authorized by the state banking board under section 6-03-63, but that in any event the maximum allowable interest rate ceiling shall not be less than seven percent, and in the computation of interest the same shall not be compounded, provided, however, that a minimum interest charge of fifteen dollars may be made. ~~This section shall not apply to a loan made to a foreign or domestic corporation, or a cooperative corporation or association, nor to any business loan the principal amount of which amounts to more than twenty-five thousand dollars.~~ No contract shall provide for the payment of interest on interest overdue, but this section shall not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section shall be deemed usury. This section shall not apply to a loan made to a foreign or domestic corporation, cooperative corporation or association, trust, or to a partnership, limited partnership, or association which files a state or federal partnership income tax return, nor to any business loan or forbearance of money, goods, or things in action the principal amount of which amounts to more than

thirty-five thousand dollars. Further, without regard to the interest rate limit set forth herein, state chartered banks and the Bank of North Dakota may charge interest at a rate equal to the maximum allowable rate which lawfully may be charged for a particular type of loan by national banking associations or state or federally chartered savings and loan associations operating out of facilities located in this state.

Approved March 28, 1979

CHAPTER 486

HOUSE BILL NO. 1160
(Black)

NOTICE TO CHANGE OR TERMINATE LEASE

AN ACT to amend and reenact sections 47-16-07 and 47-16-15, relating to the notice required to be given by a landlord to change the terms of a lease and the notice required to be given by either party to terminate a lease.

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

SECTION 1. AMENDMENT.) Section 47-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-07. LEASES - NOTICE BY LANDLORD TO CHANGE TERMS - WHEN EFFECTIVE.) In all leases of land or tenements, or of any interest therein, from month to month, the landlord may change the terms of the lease to take effect at the expiration of the month upon giving notice in writing at least ~~fifteen~~ thirty days before the expiration of the month. The notice, when served upon the tenant, ~~of--itself~~ shall operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. For the purpose of this section, notice may be served in any reasonable manner which actually informs the tenant of the changes in the terms of the lease.

SECTION 2. AMENDMENT.) Section 47-16-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-15. NOTICE OF TERMINATION OF LEASE.) A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding thirty days; provided, however, that as to tenancies from month to month, either of the parties may terminate the same by giving at least thirty days' notice thereof at any time, and the rent shall be due and payable to and including the date of termination; and provided further that if a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.

Approved March 3, 1979

CHAPTER 487

HOUSE BILL NO. 1365
(Berge)

LEASE SECURITY DEPOSITS

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 of the North Dakota Century Code, relating to real property and dwelling security deposits.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 47-16-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in ~~an interest-bearing account at the maximum rate allowed for passbook savings~~ any federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing thereon shall be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.

Approved March 8, 1979

CHAPTER 488

HOUSE BILL NO. 1582
(Lardy, Brokaw, Hanson, Melby)

HOMESTEAD AVAILABILITY

AN ACT to amend and reenact sections 47-18-01, 47-18-03, 47-18-14, 47-18-17, 47-18-18, and 47-18-19 of the North Dakota Century Code, relating to the homestead; and to repeal section 47-18-02 of the North Dakota Century Code, relating to the homestead.

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

* SECTION 1. AMENDMENT.) Section 47-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-01. HOMESTEAD EXEMPTION - AREA AND VALUE.) The homestead of ~~every head of the family~~ any person, whether married or unmarried, residing in this state shall consist of the land upon which the claimant resides, and the dwelling house ~~situated thereon~~ on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on ~~said~~ the land, the total not to exceed ~~sixty~~ eighty thousand dollars in value, over and above liens or encumbrances or both. ~~Such~~ The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous.

SECTION 2. AMENDMENT.) Section 47-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-03. SELECTION OF HOMESTEAD EXEMPTION.) If a homestead claimant is married, the homestead may be selected from the separate property of ~~the husband or either spouse~~, with the consent of the ~~wife, from her separate property~~ When the homestead claimant is not married but is the head of a family within the meaning of section 47-18-02, the homestead may be selected from his property other spouse.

** SECTION 3. AMENDMENT.) Section 47-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 47-18-01 was also amended by section 1 of Senate Bill No. 2336, chapter 489.

** NOTE: Section 47-18-14 was also amended by section 92 of House Bill No. 1073, chapter 187, and by section 3 of Senate Bill No. 2336, chapter 489.

47-18-14. PROCEEDS OF SALE EXEMPT - DISPOSITION.) If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a husband-whose-wife married claimant whose spouse is living, the court may direct that the ~~forty~~ eighty thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by ~~the--husband~~ either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

SECTION 4. AMENDMENT.) Section 47-18-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-17. WHO MAY MAKE DECLARATION OF HOMESTEAD.) Any person ~~who-is-the-head-of-a-family~~ may make a declaration of homestead in the manner provided in sections 47-18-18 and 47-18-19. A failure to make such declaration shall not impair the homestead right.

SECTION 5. AMENDMENT.) Section 47-18-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-18. DECLARATION OF HOMESTEAD - HOW EXECUTED AND ACKNOWLEDGED.) In order to select a homestead the ~~husband-or--either head-of--the--family,--or--in--case--the--husband-has-not-made-such selection,--the-wife,~~ claimant must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same declaration for record.

A finding of a homestead exemption by the bankruptcy court on behalf of a person discharged from ~~his~~ debts pursuant to the Act of the Congress of the United States known as "an act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898", ~~and-aets-amendatory-thereof~~ as amended [ch. 541, 30 Stat. 544], shall be a declaration of homestead.

Filing for record in the register of deeds office of the county where the homestead is located a certified copy of the bankrupt's discharge of bankruptcy constitutes notice that the property has been found to be a homestead and exempt from those judgments determined by the bankruptcy court to be discharged.

SECTION 6. AMENDMENT.) Section 47-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-19. CONTENTS OF DECLARATION OF HOMESTEAD.) The declaration of a homestead must contain:

1. ~~A--statement-showing-that-the-person-making-it-is-the-head of-a-family-or,--when-the-declaratien-is-made-by-the--wife, showing-that-her-husband-has-not-made-such-declaration-for their-joint-benefit,~~

- 2- A statement that the person making it is residing on the premises and claims them as a homestead;
- 3- 2. A description of the premises; and
- 4- 3. An estimate of their cash value.

SECTION 7. REPEAL.) Section 47-18-02 of the North Dakota Century Code is hereby repealed.

Approved March 15, 1979

CHAPTER 489

SENATE BILL NO. 2336
(Farrington)

HOMESTEAD VALUE

AN ACT to amend and reenact section 47-18-01, subsection 4 of section 47-18-04, and section 47-18-14 of the North Dakota Century Code, relating to the value of a homestead exempt from execution, the value of a homestead subject to execution, and the disposition of the proceeds from the execution.

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

* SECTION 1. AMENDMENT.) Section 47-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-01. HOMESTEAD EXEMPTION - AREA AND VALUE.) The homestead of every head of the family residing in this state shall consist of the land upon which the claimant resides, and the dwelling house situated thereon in which the homestead claimant resides, with all its appurtenances, and all other improvements on said land, the total not to exceed ~~sixty~~ eighty thousand dollars in value, over and above liens or encumbrances or both. Such homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous.

SECTION 2. AMENDMENT.) Subsection 4 of section 47-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of said homestead is more than ~~sixty~~ eighty thousand dollars over and above liens or encumbrances thereon, and then only to the extent of any value in excess of the sum total of such liens and encumbrances plus said ~~sixty~~ eighty thousand dollars.

** SECTION 3. AMENDMENT.) Section 47-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 47-18-01 was also amended by section 1 of House Bill No. 1582, chapter 488.

** NOTE: Section 47-18-14 was also amended by section 92 of House Bill No. 1073, chapter 187, and by section 3 of House Bill No. 1582, chapter 488.

47-18-14. PROCEEDS OF SALE EXEMPT - DISPOSITION.) If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a husband whose wife is living, the court may direct that the ~~forty~~ eighty thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by the husband as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

Approved March 10, 1979

CHAPTER 490

HOUSE BILL NO. 1680
(Winkjer)

INSTRUMENTS RECORDED WITHOUT
ACKNOWLEDGMENT

AN ACT to create and enact a new subsection to section 47-19-02 of the North Dakota Century Code, relating to instruments entitled to record without acknowledgment.

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

SECTION 1.) A new subsection to section 47-19-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

All instruments issued by the United States, or any agency, bureau, or department thereof and the state of North Dakota and all political subdivisions thereof which affect the title to real property.

Approved March 3, 1979

CHAPTER 491

HOUSE BILL NO. 1513
(Berg)

SURVEY CORNER MARKER REQUIREMENTS

AN ACT to amend and reenact section 47-20.1-10 of the North Dakota Century Code, relating to the minimum corner requirements of United States government survey corners.

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

SECTION 1. AMENDMENT.) Section 47-20.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.1-10. MINIMUM CORNER REQUIREMENTS.) The registered land surveyor establishing or rehabilitating corner markers shall place as a minimum acceptable marker, ~~an--iron~~ a durable ferromagnetic monument not less than eighteen inches [45.72 centimeters] in length and not less than one-half inch [12.7 millimeters] in sectional dimension driven to a survey elevation depth to which is affixed a ~~metal~~ cap bearing the center point and the registered land surveyor's certificate number firmly impressed thereon.

Approved March 10, 1979

CHAPTER 492

SENATE BILL NO. 2221
(Committee on Industry, Business and Labor)
(At the request of the State Laboratories Department)

TRADEMARK PROVISIONS REPEALED

AN ACT to repeal chapter 47-23 of the North Dakota Century Code, relating to the use of the North Dakota trademark and to the approval, by the state laboratories department, for the use of the trademark.

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

SECTION 1. REPEAL.) Chapter 47-23 of the North Dakota Century Code is hereby repealed.

Approved March 10, 1979