

# LIENS

## CHAPTER 366

HOUSE BILL NO. 1252  
(Ritter)

### COLLATERAL REAL ESTATE MORTGAGE DURATION

AN ACT to amend and reenact section 35-03-17 of the North Dakota Century Code, relating to collateral real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-03-17. Collateral real estate mortgages. A mortgage which contains the following statement in printed or typed capital letters: "THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO NORTH DAKOTA CENTURY CODE CHAPTER 35-03", is subject to the provisions of this section. A mortgage executed pursuant to this section must be entitled in printed or typed capital letters: "MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE". A mortgage made pursuant to this section, notwithstanding the fact that from time to time during the term thereof no indebtedness is due from the mortgagor to the mortgagee, constitutes a continuing lien against the real property covered thereby for the amount stated in the mortgage. Any sums not exceeding the face amount of the mortgage, together with interest thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee during the term of the mortgage have a lien priority as of the date the mortgage was filed. At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial, agricultural, or consumer loans or lines of credit including, but not limited to, revolving notes and credits and overdraft checking plans.

A filed collateral real estate mortgage which states a maturity date of the instrument secured thereby of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed collateral real estate mortgage is effective for a period of five years from the date of filing and thereafter for a period of sixty days. A filed collateral real estate mortgage which states that the instrument secured thereby is payable on demand is effective for five years from the date of filing and thereafter for a period of sixty days. The effectiveness of a filed collateral real estate mortgage lapses upon the expiration of the sixty-day period unless an addendum to the collateral real estate mortgage extending its effective date is filed prior to the lapse. If a filed collateral real estate mortgage exists at the time insolvency proceedings are commenced by or against the debtor, the mortgage remains effective until sixty days after termination of the insolvency proceeding or until expiration of the five-year period, whichever occurs later. Upon such lapse, the lien created by the collateral real estate mortgage terminates. An addendum

continuing the effectiveness of the lien of the collateral real estate mortgage may be filed by the mortgagee:

1. Within six months before and sixty days after a stated maturity date of five years or less; and
2. Otherwise within six months before and sixty days after the expiration of the five-year effective date period.

An addendum to a collateral real estate mortgage for the sole purpose of continuing the effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate mortgage will be continued for five years after the stated maturity date in those instances where the original collateral real estate mortgage provided a maturity date or for five years after the expiration of the five-year period whereupon it lapses in the same manner as provided above unless another addendum to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to collateral real estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the collateral real estate mortgage.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 367

SENATE BILL NO. 2397  
(Holmberg)

### RESIDENTIAL MORTGAGE INFORMATION

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to the responsibility of mortgagees to provide information necessary to satisfy loans secured by mortgages on residential real property that is being sold; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is created and enacted as follows:

Request for information concerning payoff and escrow amounts - Penalty - Venue. Unless otherwise stated in the loan or mortgage, within seven business days after receipt of a written request that specifies the name of the owner of the property and the loan number assigned to a loan secured by a mortgage on residential real property and that indicates the information is necessary to close a sale of the property, the servicer of a loan secured by a mortgage on residential real property shall provide to the owner of the property or to that person's representative full information concerning the amount necessary on a date specified in the request to pay off the loan and of any amount held in escrow for payment of insurance premiums, taxes, and other costs relating to the real property. The servicer of the loan secured by a mortgage may not charge any fee for providing the information.

If the servicer of the loan fails to deposit with the United States postal service, facsimile, or deliver personally the information requested within seven business days after receipt of the written request for information and the closing date for sale of the property is postponed as a result of the delay, the servicer of the loan is liable to the owner of the property for all damages sustained because of the delay. Notwithstanding any other law, an action brought to recover damages under this section must be heard in the county where the real property is located or where the plaintiff resides if the residence is within this state.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 368

HOUSE BILL NO. 1526  
(Laughlin)

### REPAIRMEN'S LIENS

AN ACT to amend and reenact sections 35-13-01, 35-13-02, 35-13-03, and 35-13-04 of the North Dakota Century Code, relating to repairmen's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-13-01. Repairman's lien authorized. Any blacksmith, machinist, farm equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business within this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien thereon, and on any accessories and parts placed upon the property, for reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed one thousand dollars or twenty-five percent or, two thousand five hundred dollars or twenty-five percent for property used for agricultural purposes, of the value of the property, in its repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

SECTION 2. AMENDMENT. Section 35-13-02 of the North Dakota Century Code is amended and reenacted as follows:

35-13-02. Lien statement - Contents - When required - Filing. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:

1. The labor performed.
2. The materials furnished.

3. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
4. The name of the person for whom the labor was performed or to whom the materials were furnished.
5. A description of the property upon which the lien is claimed.

A person filing a verified statement shall within ~~twenty~~ thirty days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.

SECTION 3. AMENDMENT. Section 35-13-03 of the North Dakota Century Code is amended and reenacted as follows:

35-13-03. Separate articles of personal property may be included in one lien statement. Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor may include all the articles of personal property so made, altered, or repaired within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, preceding the filing of the lien statement in the same statement, and the statement has the same force and effect as though a separate statement had been filed for each article.

SECTION 4. AMENDMENT. Section 35-13-04 of the North Dakota Century Code is amended and reenacted as follows:

35-13-04. Priority of lien. A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the mechanic's repairman's lien up to one thousand dollars or twenty-five percent or, two thousand five hundred dollars or twenty-five percent for property used for agricultural purposes, of the retail value, whichever is greater, in its repaired condition, has priority over the mortgage or financing statement.

Approved April 8, 1991  
 Filed April 8, 1991

## CHAPTER 369

HOUSE BILL NO. 1538  
(Laughlin, Brokaw)

### AGRICULTURAL SUPPLIERS' LIENS

AN ACT to amend and reenact section 35-31-02 of the North Dakota Century Code, relating to filing of agricultural supplier's lien statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien. To obtain an agricultural supplier's lien, the person entitled to the lien, within ~~ninety~~ one hundred twenty days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the county or counties in which the crop, agricultural product, or livestock was grown. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.

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Filed April 8, 1991

\* NOTE: Section 35-31-02 was also amended by section 10 of Senate Bill No. 2024, chapter 449.

## CHAPTER 370

HOUSE BILL NO. 1383  
(Rennerfeldt, Schmidt, Porter)

### AIRCRAFT REPAIR AND MAINTENANCE LIENS

AN ACT to provide for the creation of an aircraft repair and maintenance lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Aircraft repair and maintenance lien authorized. Any person who repairs or performs maintenance work on an aircraft has a lien on the aircraft for:

1. The amount due under a contract for the repairs or maintenance work; or
2. If no amount is specified by contract, the reasonable and usual compensation for the repairs or maintenance work.

SECTION 2. Possession of aircraft.

1. A holder of a lien under this chapter may retain possession of the aircraft subject to the lien until the amount due is paid.
2. Except as provided in subsection 3, if the holder of a lien under this chapter relinquishes possession of the aircraft before the amount due is paid, that person may retake possession of the aircraft as provided by section 41-09-49.
3. The holder of a lien under this chapter may not retake possession of the aircraft from a bona fide purchaser for value who, before the date the lien is recorded under section 3 of this Act, purchases the aircraft without knowledge of the lien.

SECTION 3. Recording of lien. The holder of a lien under this chapter may record the lien on the aircraft by filing with the federal aviation administration aircraft registry not later than the ninetieth day after the date of performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations. The document must include:

1. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
2. The amount due for repairs or maintenance.
3. A complete description of the aircraft.

4. The name and address of the owner of the aircraft and the number assigned the aircraft by the federal aviation administration, if known.

#### SECTION 4. Notice to owner and lienholders.

1. The holder of a lien under sections 1 through 6 of this Act who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown on the records maintained for that purpose by the federal aviation administration aircraft registry not later than the thirtieth day after the date of performance of the last repair or maintenance. This notice must include:
  - a. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
  - b. The amount due for repairs or maintenance.
  - c. A complete description of the aircraft.
  - d. A statement describing the legal right of the holder of the lien under sections 1 through 6 of this Act to sell the aircraft at public auction and apply the proceeds to the amount due.
2. The notice must be delivered by registered mail.

SECTION 5. Sale of aircraft authorized. If the holder of a lien under sections 1 through 6 of this Act provides the notice required by section 4 of this Act and the amount due remains unpaid after the sixtieth day after the date of performance of the last repair or maintenance, the holder of the lien may sell the aircraft at a public sale if the court finds that the amount due is the amount specified by contract or the reasonable and usual compensation for the repairs or maintenance work performed and the holder may then apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

SECTION 6. Attorneys' fees. The court in a suit brought under sections 1 through 6 of this Act may award reasonable attorneys' fees to the prevailing party.

Approved April 16, 1991  
Filed April 18, 1991