

PROPERTY

CHAPTER 484

HOUSE BILL NO. 1100
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

RULE AGAINST PERPETUITIES

AN ACT to adopt the Uniform Statutory Rule Against Perpetuities; and to repeal sections 47-02-27, 47-02-31, 47-04-11, 47-04-12, and 59-05-36 of the North Dakota Century Code, relating to the rule against perpetuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statutory rule against perpetuities - Invalidity of certain contingent property interests, general powers of appointment, special powers of appointment, and general testamentary powers of appointment.

1. A contingent property interest is invalid unless:
 - a. When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
 - b. The interest either vests or terminates within ninety years after its creation.
2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:
 - a. When the power is created, the condition precedent is certain to be satisfied or to become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or
 - b. The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.
3. A special power of appointment or a general testamentary power of appointment is invalid unless:
 - a. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
 - b. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.
4. In determining whether a contingent property interest or a power of appointment is valid under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3,

the possibility that a child will be born to an individual after the individual's death is disregarded.

5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to postpone the vesting or termination of any interest or trust until, disallow the vesting or termination of any interest or trust beyond, require all interests or trusts to vest or terminate no later than, or operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, then the portion of the language described in (b) is inoperative if and to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the lives specified in the portion of the language described in (a).

SECTION 2. When contingent property interest or power of appointment created.

1. Except as provided in subsections 2 and 3 of this section and in subsection 1 of section 5 of this Act, the time of creation of a contingent property interest or a power of appointment is determined under general principles of property law.
2. For purposes of this Act, if there is a person who alone can exercise a power created by a governing instrument to become an unqualified beneficial owner of a contingent property interest or a property interest subject to a power of appointment described in subsection 2 or 3 of section 1 of this Act, the contingent property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.
3. For purposes of this Act, a contingent property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the contingent property interest or power of appointment in the original contribution was created.

SECTION 3. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed under subdivision b of subsection 1 of section 1 of this Act, subdivision b of subsection 2 of section 1 of this Act, and subdivision b of subsection 3 of section 1 of this Act, if:

1. A contingent property interest or a power of appointment becomes invalid under section 1 of this Act;
2. A class gift is not but might become invalid under section 1 of this Act and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. A contingent property interest that is not validated by subdivision a of subsection 1 of section 1 of this Act can vest but not within ninety years after its creation.

SECTION 4. Exclusions from statutory rule against perpetuities. Section 1 of this Act does not apply to:

1. A contingent property interest or a power of appointment arising out of a nondonative transfer, except a contingent property interest or a power of appointment arising out of a premarital or postmarital agreement, a separation or divorce settlement, a spouse's election, a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, a contract to make or not to revoke a will or trust, a contract to exercise or not to exercise a power of appointment, a transfer in satisfaction of a duty of support, or a reciprocal transfer.
2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.
3. A power to appoint a fiduciary.
4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.
5. A contingent property interest held by a charity, government, or governmental agency or subdivision, if the contingent property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.
6. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or excluded by another statute of this state.

SECTION 5. Prospective application.

1. Except as extended by subsection 2, this Act applies to a contingent property interest or a power of appointment that is created on or after the effective date of this Act. For purposes of this section, a contingent property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.
2. If a contingent property interest or a power of appointment was created before the effective date of this Act and is determined in a judicial proceeding, commenced on or after the effective date of this Act, to violate this state's rule against perpetuities as that rule existed before the effective date of this Act, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the

rule against perpetuities applicable in the contingent property interest or power of appointment was created.

SECTION 6. REPEAL. Sections 47-02-27, 47-02-31, 47-04-11, 47-04-12, and 59-05-36 of the North Dakota Century Code are repealed.

Approved March 19, 1991
Filed March 19, 1991

CHAPTER 485

HOUSE BILL NO. 1320
(Representatives G. Berg, Nicholas, Shide)
(Senators Langley, Meyer)

WETLANDS RESERVE EASEMENT DURATION

AN ACT to amend and reenact subsection 2 of section 47-05-02.1 of the North Dakota Century Code, relating to the duration of wetlands reserve program easements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-05-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property ~~shall~~ must be specifically set out, and in no case ~~shall may~~ the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 486

SENATE BILL NO. 2579
(Holmberg, Stenehjelm, Peterson, Marks, Schoenwald)
(Approved by the Committee on Delayed Bills)

ESCROW EXCESS ASSESSMENTS

AN ACT to provide for disposition of excess assessments for escrow accounts on residential real estate mortgage loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. "Borrower" means the obligor under a residential mortgage held by a secondary mortgagee.
2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year.
3. "Secondary mortgagee" means a successor mortgagee not residing or domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments, and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home.
4. "Servicer" means a person or entity maintaining an escrow account for a secondary residential mortgagee.

SECTION 2. Notice of excess escrow payments. If an escrow account is maintained by the servicer of a secondary residential mortgage for a secondary mortgagee, and the account contains an excess amount, the servicer shall provide written notice to the borrower, on or before March first of the following year, of the escrow account status. The information provided to the borrower must include the balance in the escrow account after the annual payment of taxes and special assessments.

SECTION 3. Application of excess escrow payments. Upon receipt of the written notice under section 2 of this Act, the borrower may, within thirty days after the date of the notice, elect in a written request to the servicer one of the following options:

1. Refund of all or part of the excess amount; or

2. Retention of all or part of the excess amount in the escrow account.

If the borrower does not advise the servicer in writing within the time provided in this section, the servicer may continue maintenance of the escrow account in the same manner until the next report to the borrower under this Act. If the borrower advises the servicer of an election within the time prescribed in this Act, the servicer must comply with the borrower's election within thirty days of the election.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 487

HOUSE BILL NO. 1328
(Dorso, Carlson)

RESIDENTIAL LEASE RENEWAL PRESUMPTION

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to presumed renewal of leases of residential real property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Automatic renewal of leases of residential real property - When notice required. Notwithstanding the provisions of section 47-16-06, in any lease of a specified term of two months or more of real property used for residential purposes, the lessor may not enforce an automatic renewal clause of a lease unless the lessor has notified the lessee in writing, delivered personally or by first-class mail, of the automatic renewal provision, not less than thirty days prior to the expiration date of the current lease. If such notice has not been given, the lease expires, and the terms of the latest lease convert to a month-to-month tenancy.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 488

SENATE BILL NO. 2353
(Senators Nalewaja, Redlin)
(Representative Nicholas)

HOMESTEAD EXEMPTION WAIVER NOTICE

AN ACT to amend and reenact subsection 1 of section 47-18-05.1 of the North Dakota Century Code, relating to notice of waiver of homestead exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-18-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~All mortgages on homesteads~~ A mortgage on a homestead which is executed after June 30, ~~1987~~ 1991, and which ~~are~~ is not a purchase money ~~agreements~~ contract must contain the following statement printed in a conspicuous manner and must be signed and dated by the ~~person waiving the exemption at the time the contract is executed:~~

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

This statement must be immediately followed by the date and the signature of the person to indicate that the person is specifically and knowingly waiving the exemption, which must be a separate signature from that person's signature to the entire mortgage contract.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 489

SENATE BILL NO. 2409
(Dotzenrod)

FENCE VIEWERS

AN ACT to amend and reenact sections 47-26-02, 47-26-04, and 47-26-19 of the North Dakota Century Code, relating to elimination of the duty of county commissioners to act as fence viewers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-26-02 of the North Dakota Century Code is amended and reenacted as follows:

47-26-02. Fence viewers. In an organized township, the members of the board of township supervisors shall act as fence viewers; ~~and in territory which is not organized into civil townships, the members of the board of county commissioners shall act in such capacity.~~

SECTION 2. AMENDMENT. Section 47-26-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-26-04. Fees of fence viewers. Each township supervisor ~~or county commissioner~~ may be paid by the employing person ~~employing him~~, at the rate of no more than fifteen dollars per day for the time ~~he is~~ employed as a fence viewer. If such person neglects to pay such fees within thirty days after the service is performed, the township supervisor ~~or county commissioner~~ may recover the amount thereof in a civil action.

SECTION 3. AMENDMENT. Section 47-26-19 of the North Dakota Century Code is amended and reenacted as follows:

47-26-19. Fence viewers neglecting to perform duty - Penalty. A township supervisor ~~or a member of the board of county commissioners~~, who unreasonably neglects to view a fence after having been requested to do so, or who refuses to perform any other duty required ~~of him~~ under the provisions of this chapter, shall forfeit the sum of five dollars and shall be liable to the party injured for all damages consequent upon such neglect.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 490

SENATE BILL NO. 2216
(Committee on Judiciary)

(At the request of the Board of University and School Lands)

ABANDONED PROPERTY LISTS AND NOTICES

AN ACT to amend and reenact subsection 12 of section 47-30.1-01, section 47-30.1-18, and subsection 1 of section 47-30.1-19.1 of the North Dakota Century Code, relating to the definition of "person", publication requirements for abandoned property, and abandoned property lists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 47-30.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Person" means an individual, business association, state or other government including the government of the United States, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

SECTION 2. AMENDMENT. Section 47-30.1-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-18. Notice and publication of lists of abandoned property.

1. The administrator shall cause a notice to be published not later than March first of the year immediately following the report required by section 47-30.1-17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.
2. The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:
 - a. The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1.
 - b. A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.

3. The administrator is not required to publish in the notice any items of less than fifty dollars unless the administrator considers their publication to be in the public interest.
4. Not later than March first, or in the case of property reported by life insurance companies, not later than September first, of the year immediately following the report required by section 47-30.1-17, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.
5. The mailed notice must contain:
 - a. A statement that, according to a report filed with the administrator, property is being held to which the addressee appears entitled.
 - b. The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.
 - c. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator and all further claims must be directed to the administrator.
- 6- 4. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 47-30.1-19.

SECTION 3. AMENDMENT. Subsection 1 of section 47-30.1-19.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. One list must refer to all property unclaimed funds of fifty dollars or more in the administrator's custody and must contain the name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 491

HOUSE BILL NO. 1099
(Committee on Finance and Taxation)
(At the request of the Board of University and School Lands)

CHECK AND DEPOSIT DORMANCY

AN ACT to create and enact section 47-30.1-02.1 of the North Dakota Century Code, relating to the dormancy period for uncashed checks; and to amend and reenact subsection 1 of section 47-30.1-06 of the North Dakota Century Code, relating to the dormancy period for deposits with banking and financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 47-30.1-02.1 of the North Dakota Century Code is created and enacted as follows:

47-30.1-02.1. Uncashed checks. Except as provided in sections 47-30.1-04 and 47-30.1-05, any checks held, issued, or owing in the ordinary course of the holder's business which remain uncashed by the owner for more than two years after becoming payable are presumed abandoned.

SECTION 2. AMENDMENT. Subsection 1 of section 47-30.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless, in the case of a matured time deposit, the banking or financial organization has mailed, at least once every ~~seven~~ five years certified mail, requesting a return receipt, to the owner and the receipt has been returned and signed by the addressee, or unless the owner, within ~~seven~~ five years has:
 - a. In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
 - b. Communicated in writing with the banking or financial organization concerning the property;
 - c. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;
 - d. Owned other property to which subdivision a, b, or c applies and if the banking or financial organization communicates in

writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

- e. Had another relationship with the banking or financial organization concerning which the owner has:

- (1) Communicated in writing with the banking or financial organization; or
- (2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

Approved March 7, 1991

Filed March 7, 1991

CHAPTER 492

SENATE BILL NO. 2095
(Committee on State and Federal Government)
(At the request of the Attorney General)

UNCLAIMED PROPERTY PROCEDURES

AN ACT to create and enact section 47-30.1-03.1 of the North Dakota Century Code, relating to recovery of unclaimed property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 47-30.1-03.1 of the North Dakota Century Code is created and enacted as follows:

47-30.1-03.1. Property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, or created in this state.

1. All intangible property, including any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within three years after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:
 - a. The address of the owner is unknown; and
 - b. The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or is incorporated, organized, or created in this state.
2. The provisions of subsection 1 do not apply to property that is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different from that prescribed in subsection 1.
3. The provisions of subsection 1 apply to all property held on the effective date of this Act, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

Approved March 18, 1991
Filed March 19, 1991