

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

HOUSE BILL NO. 1324
(Representatives R. Kelsch, Carlisle, Kretschmar, Mahoney)

AN ACT to amend and reenact section 28-21-06 of the North Dakota Century Code, relating to the contents of writs of execution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is amended and reenacted as follows:

28-21-06. Issuance and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff as provided in section 28-21-05. It must refer intelligibly to the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, and the names of the parties, the last known address of the judgment debtor, the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known. If the execution is against the property of a judgment debtor, the execution must also state the amount of money the judgment ordered the debtor to pay to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county other than that of the county of the issuing writ, the date and time the judgment was docketed in the county of the sheriff to whom the execution is being issued. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and, if the same judgment orders the party against whom the judgment was rendered to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable as of the date of issuance of the execution. Upon receipt of an execution the sheriff shall:

1. If the execution is against the property of the judgment debtor, satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the debtor, and, if sufficient personal property cannot be found, out of the real property belonging to the debtor on the day when the judgment was docketed in the county or at any time thereafter. If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or
2. If the execution is for the delivery of the possession of real or personal property, deliver the possession of the property to the party entitled thereto, and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered and, if sufficient personal property cannot be found, out of the real property belonging to the party on the day when the judgment was docketed in the county or at any time thereafter. If delivery of the property cannot be had, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party as if an execution against the property of the party had been issued.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1324.

House Vote: Yeas 95 Nays 0 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State