

HOUSE BILL NO. 1281

Introduced by

Representatives DeKrey, Nicholas

Senator Tallackson

1 A BILL for an Act to create and enact section 32-19-06.2 of the North Dakota Century Code,
2 relating to deficiency judgments on agricultural real property.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 32-19-06.2 of the North Dakota Century Code is created and
5 enacted as follows:

6 **32-19-06.2. Deficiency judgments on agricultural real property.** Notwithstanding
7 any other provision of law, a mortgagee holding a mortgage on agricultural real property may
8 obtain a deficiency judgment against the mortgagor of agricultural real property contracted for
9 after August 1, 2002, and any successor in interest of the mortgagor who has assumed the debt
10 secured by the mortgage. In an action involving the foreclosure of a mortgage on agricultural
11 real property, the foreclosing party shall state in its pleading whether a deficiency judgment will
12 be sought, identify each party claimed to be personally liable for payment of the debt secured
13 by the mortgage being foreclosed, and demand a deficiency judgment against those parties.
14 Within ninety days after the later of the filing or service of the pleading seeking the foreclosure
15 of a mortgage, the party seeking a deficiency judgment on agricultural real property shall file
16 with the clerk of district court a notice for an appraisal of the real property by a licensed or
17 certified appraiser and shall mail by first-class mail a copy of the request to each party claimed
18 to be personally liable for a deficiency, at the party's last-known residence address. The notice
19 must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be
20 included as a cost allowed the foreclosing party if judgment is entered granting foreclosure.
21 Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the property.
22 Within twenty days after completion of the appraisal, the appraiser shall provide to the
23 foreclosing party and file with the clerk of court a written report indicating the fair market value
24 of the agricultural real property. The foreclosing party also shall mail by first-class mail a copy

1 of the report to each party claimed to be personally liable to the party's last-known residence
2 addressed. Within fifteen days of the later filing or mailing of the report of the foreclosing
3 party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be
4 conducted by a licensed or certified appraiser at the party's own expense. The additional
5 appraisal report must be served upon the foreclosing party and filed within thirty days of the
6 filing of the notice of appraisal and must be considered, with other appraisal reports filed, in the
7 determination by the court of the fair market value of the property which determination as to fair
8 market value must be made as of the date of the foreclosing party's appraisal. At the time of
9 the entry of the judgment, the court shall include in its findings of fact the fair market value of
10 the property and, if the fair market value is less than the amount found to be due the foreclosing
11 party, identify the persons who are personally liable for any deficiency remaining after a sheriff's
12 sale of the property pursuant to foreclosure judgment. The foreclosure judgment must be in an
13 amount equal to the balance then due and owing on the mortgage, plus costs taxed and
14 allowed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the
15 clerk of court shall note the amount to be credited on the foreclosure judgment. That amount
16 must be at least the amount bid at the sheriff's sale, less the costs of the sheriff's sale, but the
17 credit may not be less than the fair market value established by the court. Only the amount
18 actually paid in excess of the foreclosure judgment may constitute surplus payable to the debtor
19 pursuant to section 28-23-09. At any time after the order confirming sale, the clerk shall enter a
20 money judgment to the extent of the deficiency against each party found by the court to be
21 personally liable for the deficiency. The foreclosing party may pursue the same remedies to
22 collect the deficiency judgment as are available to collect other money judgments. The
23 deficiency judgment must be for the entire amount found to be due the foreclosing party in the
24 foreclosure judgment, together with interest on the amount of the foreclosure judgment at the
25 rate provided in the note secured by the mortgage, less the amount credited by the clerk of
26 court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear
27 interest at the same rate as the foreclosure judgment. As used in this section, "agriculture real
28 property" means platted or unplatted lands used for raising agricultural crops or grazing farm
29 animals; and "fair market value" means the highest price that agricultural real property can be
30 sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion
31 and both exercising reasonable judgment, reduced by the value of any liens paramount to the

Fifty-eighth
Legislative Assembly

1 lien of the foreclosing party. In addition to the appraisals filed by the parties, the court, in its
2 determination of the fair market value of the property, may consider affidavits from the parties or
3 other proof of paramount liens and other matters that may affect the value.

4 This section is not available unless the obligation and mortgage upon which the
5 deficiency liability is based contain language located immediately above the signatures of the
6 parties advising them that the mortgagee has the right to proceed to obtain and collect a
7 deficiency judgment, together with foreclosure of the real property mortgaged under applicable
8 laws.