

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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, 2003, and any successor in interest of the mortgagor who has assumed the  
10 debt secured by the mortgage. In an action involving the foreclosure of a mortgage on  
11 agricultural real property, the foreclosing party shall state in its pleading whether a deficiency  
12 judgment will be sought, identify each party claimed to be personally liable for payment of the  
13 debt secured by the mortgage being foreclosed, and demand a deficiency judgment against  
14 those parties. Within ninety days after the later of the filing or service of the pleading seeking  
15 the foreclosure of a mortgage, the party seeking a deficiency judgment on agricultural real  
16 property shall file with the clerk of district court a notice for an appraisal of the real property by a  
17 licensed or certified appraiser and shall mail by first-class mail a copy of the request to each  
18 party claimed to be personally liable for a deficiency, at the party's last-known residence  
19 address. The notice must contain the foreclosing party's agreement to pay the cost of the  
20 appraisal, which must be included as a cost allowed the foreclosing party if judgment is entered  
21 granting foreclosure. Upon the filing of the notice, the foreclosing party shall arrange for an  
22 appraisal of the property. Within twenty days after completion of the appraisal, the appraiser  
23 shall provide to the foreclosing party and file with the clerk of court a written report indicating  
24 the fair market value of the agricultural real property. The foreclosing party also shall mail by

1 first-class mail a copy of the report to each party claimed to be personally liable to the party's  
2 last-known residence addressed. Within fifteen days of the later filing or mailing of the report of  
3 the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional  
4 appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The  
5 additional appraisal report must be served upon the foreclosing party and filed within thirty days  
6 of the filing of the notice of appraisal and must be considered, with other appraisal reports filed,  
7 in the determination by the court of the fair market value of the property which determination as  
8 to fair market value must be made as of the date of the foreclosing party's appraisal. At the  
9 time of the entry of the judgment, the court shall include in its findings of fact the fair market  
10 value of the property and, if the fair market value is less than the amount found to be due the  
11 foreclosing party, identify the persons who are personally liable for any deficiency remaining  
12 after a sheriff's sale of the property pursuant to foreclosure judgment. The foreclosure  
13 judgment must be in an amount equal to the balance then due and owing on the mortgage, plus  
14 costs taxed and allowed by the court. Upon entry of an order confirming the sheriff's sale in the  
15 foreclosure, the clerk of court shall note the amount to be credited on the foreclosure judgment.  
16 That amount must be at least the amount bid at the sheriff's sale, less the costs of the sheriff's  
17 sale, but the credit may not be less than the fair market value established by the court. Only  
18 the amount actually paid in excess of the foreclosure judgment may constitute surplus payable  
19 to the debtor pursuant to section 28-23-09. At any time after the order confirming sale, the  
20 clerk shall enter a money judgment to the extent of the deficiency against each party found by  
21 the court to be personally liable for the deficiency. The foreclosing party may pursue the same  
22 remedies to collect the deficiency judgment as are available to collect other money judgments.  
23 The deficiency judgment must be for the entire amount found to be due the foreclosing party in  
24 the foreclosure judgment, together with interest on the amount of the foreclosure judgment at  
25 the 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

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  
3 or 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.