

HOUSE BILL NO. 1312

Introduced by

Representatives DeKrey, Nicholas

Senators Klein, 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, 2005, and any successor in interest of the mortgagor who has assumed the debt
10 secured by the mortgage.

11 In an action involving the foreclosure of a mortgage on agricultural real property, the
12 foreclosing party shall state in its pleading whether a deficiency judgment will be sought, identify
13 each party claimed to be personally liable for payment of the debt secured by the mortgage
14 being foreclosed, and demand a deficiency judgment against those parties.

15 Within ninety days after the later of the filing or service of the pleading seeking the
16 foreclosure of a mortgage, the party seeking a deficiency judgment on agricultural real property
17 shall file with the clerk of district court a notice for an appraisal of the real property by a licensed
18 or certified appraiser and shall mail by first-class mail a copy of the request to each party
19 claimed to be personally liable for a deficiency, at the party's last-known address. The notice
20 must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be
21 included as a cost allowed the foreclosing party if judgment is entered granting foreclosure.

22 Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the
23 property. Within twenty days after completion of the appraisal, the appraiser shall provide to
24 the foreclosing party and file with the clerk of court a written report indicating the fair market

1 value of the agricultural real property. The foreclosing party also shall mail by first-class mail a
2 copy of the report to each party claimed to be personally liable to the party's last-known
3 address.

4 Within fifteen days of the later filing or mailing of the report of the foreclosing party's
5 appraisal, any party may file a notice of intention to obtain an additional appraisal to be
6 conducted by a licensed or certified appraiser at the party's own expense. The additional
7 appraisal report must be served upon the foreclosing party and filed within thirty days of the
8 filing of the notice of appraisal and must be considered, with other appraisal reports filed, in the
9 determination by the court of the fair market value of the property which determination as to fair
10 market value must be made as of the date of the foreclosing party's appraisal.

11 At the time of the entry of the judgment, the court shall include in its findings of fact the
12 fair market value of the property and, if the fair market value is less than the amount found to be
13 due the foreclosing party, identify the persons who are personally liable for any deficiency
14 remaining after a sheriff's sale of the property pursuant to foreclosure judgment. The
15 foreclosure judgment must be in an amount equal to the balance then due and owing on the
16 mortgage, plus costs taxed and allowed by the court.

17 Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court
18 shall note the amount to be credited on the foreclosure judgment. That amount must be at
19 least the amount bid at the sheriff's sale, less the costs of the sheriff's sale, but the credit may
20 not be less than the fair market value established by the court. Only the amount actually paid in
21 excess of the foreclosure judgment may constitute surplus payable to the debtor pursuant to
22 section 28-23-09.

23 At any time after the order confirming sale, the clerk shall enter a money judgment to
24 the extent of the deficiency against each party found by the court to be personally liable for the
25 deficiency. The foreclosing party may pursue the same remedies to collect the deficiency
26 judgment as are available to collect other money judgments. The deficiency judgment must be
27 for the entire amount found to be due the foreclosing party in the foreclosure judgment, together
28 with interest on the amount of the foreclosure judgment at the rate provided in the note secured
29 by the mortgage, less the amount credited by the clerk of court upon entry of the order
30 confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as
31 the foreclosure judgment.

1 As used in this section, "agricultural real property" means platted or unplatted lands
2 used for raising agricultural crops or grazing farm animals and "fair market value" means the
3 highest price that agricultural real property can be sold for in the open market by a willing seller
4 to a willing buyer, neither acting under compulsion and both exercising reasonable judgment,
5 reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to
6 the appraisals filed by the parties, the court, in its determination of the fair market value of the
7 property, may consider affidavits from the parties or other proof of paramount liens and other
8 matters that may affect the value.

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