

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1312

Introduced by

Representatives DeKrey, Nicholas

Senators Klein, Tallackson

1 A BILL for an Act to create and enact a new section to chapter 32-19 of the North Dakota
2 Century Code, relating to deficiency judgments on agricultural land; and to amend and reenact
3 section 32-19-06 of the North Dakota Century Code, relating to foreclosures of real estate
4 mortgages.

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

6 **SECTION 1. AMENDMENT.** Section 32-19-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **32-19-06. What judgment must contain ~~–Deficiency judgments and other suits~~**
9 **~~prohibited in excess of amount by which debt exceeds fair value of mortgaged premises~~**
10 **~~–Determination of fair value of mortgaged real property.~~** In any action for the foreclosure of
11 a real estate mortgage ~~or the cancellation or the foreclosure of a land contract~~, the court may
12 shall render judgment for the amount found to be due ~~at the time of the rendition of the~~
13 ~~judgment~~, and the costs of the action; and may shall order ~~and decree~~ a sale of the premises
14 ~~described in the mortgage or contract or that part thereof as may be sufficient to pay the~~
15 amount adjudged to be due ~~and the costs of the action~~. The court may order ~~and compel~~
16 delivery of the possession of the premises to the purchaser ~~at the sale, but in no case may the~~
17 ~~possession of the premises sold be delivered until~~ after the expiration of the ~~one-year~~
18 redemption period unless otherwise ~~allowed~~ ordered by the court pursuant to section 32-19-19.
19 The ~~court shall direct, and the~~ judgment must provide; that during the redemption period the
20 debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real
21 property sold except as provided by section 32-19-19. ~~The court may not render a deficiency~~
22 ~~judgment for any sum whatever against the mortgagor or purchaser, or the successor in~~
23 ~~interest of either, except as hereinafter provided. Where a note or other obligation and a~~
24 ~~mortgage upon real property have been given to secure a debt contracted after July 1, 1951,~~

1 ~~and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due~~
2 ~~and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency~~
3 ~~judgment, if the plaintiff has so indicated in the complaint, against the party or parties~~
4 ~~personally liable for that part of the debt and costs of the action remaining unsatisfied after the~~
5 ~~sale of the mortgaged premises. The separate action for a deficiency judgment must be~~
6 ~~brought within ninety days after the sale of the mortgaged premises. The court, in the separate~~
7 ~~action, may render a deficiency judgment against the party or parties personally liable, but the~~
8 ~~deficiency judgment may not be in excess of the amount by which the sum adjudged to be due~~
9 ~~and the costs of the action exceed the fair value of the mortgaged premises. In case the~~
10 ~~mortgaged premises sell for less than the amount due and to become due on the mortgaged~~
11 ~~debt and costs of sale, there is no presumption that the premises sold for their fair value. In all~~
12 ~~actions brought for a deficiency judgment and before any judgment can be rendered therein,~~
13 ~~the determination of the fair value of the mortgaged premises must first be submitted to a jury~~
14 ~~at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be~~
15 ~~rendered against the party or parties personally liable unless the fair value of the mortgaged~~
16 ~~premises is determined by the jury to be less than the sum adjudged to be due and the costs of~~
17 ~~the action. Fifteen days' notice of the time and place when or where the fair value of the~~
18 ~~mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to~~
19 ~~the party or parties against whom personal judgment is sought. At that time and place the party~~
20 ~~or parties may offer evidence to show the fair value of the mortgaged premises even though~~
21 ~~they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency~~
22 ~~judgment obtained must be enforced by execution as provided by law, except that no execution~~
23 ~~may be enforced after three years from the date of the rendition of the deficiency judgment.~~
24 ~~The mortgagee or vendor or the successor in interest of either is not permitted or authorized~~
25 ~~either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or~~
26 ~~the cancellation or the foreclosure of a land contract, if the mortgage or contract was made~~
27 ~~after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the~~
28 ~~debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by~~
29 ~~which the debt and the costs of the action exceed the fair value of the mortgaged premises.~~
30 ~~The fair value must be determined by a jury in the same manner as the fair value is determined~~
31 ~~in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such~~

1 ~~judgment must be enforced by execution as provided by law except that the execution may not~~
2 ~~be enforced after three years after the date of the rendition of the judgment.~~

3 **SECTION 2.** A new section to chapter 32-19 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Deficiency judgments on agricultural land.** If the complaint in an action to foreclose
6 on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency
7 judgment, a separate action for the deficiency must be brought within ninety days after the
8 sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in
9 excess of the amount by which the sum adjudged to be due and the cost of the action exceed
10 the fair market value of the mortgaged premises. There is not a presumption that the premises
11 sold for the fair market value. The court may not render a deficiency judgment unless the fair
12 market value as determined by the court is less than the sum adjudged to be due and costs of
13 the action. Fifteen days' notice of the time and place for determination of fair market value
14 must be given to all parties against whom personal judgment is sought. Any party may offer
15 evidence to show the fair market value even though the party may not have otherwise
16 appeared in the action for a deficiency judgment. Any deficiency judgment obtained may be
17 enforced only by execution within three years from the date of entry of the judgment. As used
18 in this section, "fair market value" means the most probable price that real property can be sold
19 for in the open market by a willing seller to a willing buyer, neither acting under compulsion and
20 both exercising reasonable judgment.