

SENATE BILL NO. 2205

Introduced by

Senator Holmberg

1 A BILL for an Act to create and enact section 32-19-23.1 of the North Dakota Century Code,
2 relating to abandoned property; and to amend and reenact sections 28-23-11, 32-19-18,
3 32-19-19, 32-19-23, and 32-19-27 of the North Dakota Century Code, relating to foreclosure of
4 real estate.

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

6 **SECTION 1. AMENDMENT.** Section 28-23-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-23-11. Purchaser's right - Sheriff's certificate.**

9 1. The purchaser of real property under execution is substituted for the judgment debtor
10 and acquires all the right, title, interest, and claim of the debtor to the property. If the
11 estate is a leasehold less than two years' unexpired term, the sale is absolute.

12 Otherwise, the real property is subject to redemption under this title. The officer shall
13 give to the purchaser a certificate of sale containing:

- 14 a. A particular description of the real property sold;
15 b. A statement of the price bid for each distinct lot or parcel;
16 c. A statement of the whole price paid;
17 d. If subject to redemption, a statement to that effect, including the applicable
18 redemption period; and
19 e. The name of each plaintiff and defendant named in the foreclosure action or
20 served in the foreclosure by the advertisement.

21 2. The officer shall execute the certificate and acknowledge or prove the certificate as
22 required for deeds of real property.

23 **SECTION 2. AMENDMENT.** Section 32-19-18 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **32-19-18. Redemption.**

2 A party in a foreclosure action or the successor of a party may redeem from the foreclosure
3 sale within sixty days after the sale, except for abandoned property as provided in section
4 32-19-19 and agricultural land. Agricultural land may be redeemed within three hundred
5 sixty-five days after the filing of the summons and complaint in the office of the clerk of district
6 court or the time of the first publication of the notice by advertisement. The final date for
7 redemption of agricultural land may not be earlier than sixty days after the sheriff's sale. The
8 owner of the property has a paramount right to redeem upon paying the amount bid at the
9 sheriff's sale plus interest on that amount at the same rate as the obligation secured by the
10 mortgage. Persons holding subordinate liens on the property may redeem in the order of priority
11 as determined by the order of attachment to the property. This redemption has the effect of a
12 redemption as of the date of deposit, subject to the subsequent payment of any additional
13 amount, if any, determined to be due as of that date.

14 **SECTION 3. AMENDMENT.** Section 32-19-19 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **32-19-19. Injury to property restrained - Abandoned real property.**

17 The court, by injunction, on good cause shown, may restrain the party in possession from
18 doing any act to the injury of real property during the existence of the lien or foreclosure of a
19 mortgage ~~thereon~~ on the real property and until the expiration of the time allowed for
20 redemption. If at the time of the commencement of the foreclosure action and at any time before
21 the sheriff's sale the mortgagee, or after the sheriff's sale the holder of the sheriff's certificate of
22 sale, reasonably believes that the property is abandoned, the mortgagee or holder of the
23 sheriff's certificate may allege abandonment in the complaint or petition the court to determine
24 abandonment. Alf by petition, a notice of hearing must be sent by mail to the last-known
25 address of the mortgagor or the party entitled to possession of the real property at least ten
26 days prior to the date of the hearing to determine abandonment. Service by mail is complete
27 upon mailing. If the court determines ~~that~~ the real property is abandoned, the court may
28 eliminate the redemption period in the foreclosure judgment or, upon petition, grant the
29 mortgagee or holder of the sheriff's certificate immediate possession and use of the property
30 and all benefit and rents from the property until expiration of the redemption period. The court
31 may ~~proceed at the hearing to~~ consider remedies to prevent waste in a foreclosure action or

1 upon a petition for abandonment. The provisions of this section concerning abandoned real
2 property do not apply to agricultural property as defined by section 57-02-01.

3 **SECTION 4. AMENDMENT.** Section 32-19-23 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **32-19-23. When notice not required.**

6 1. If the record title to real estate is in the name of a deceased person, notice before
7 foreclosure need not be served unless a personal representative of the estate is
8 appointed in the county in which the real estate is situated. The certificate of the judge
9 or clerk of the district court serving the county in which the real estate is situated
10 stating that a personal representative has not been appointed is sufficient evidence of
11 that fact.

12 2. Actual service of the notice before foreclosure is not required if the property is
13 abandoned as provided under section 32-19-23.1, or if service by mail as provided in
14 this chapter has been attempted three times and the attempted service is returned as
15 refused or unclaimed.

16 **SECTION 5.** Section 32-19-23.1 of the North Dakota Century Code is created and enacted
17 as follows:

18 **32-19-23.1. Abandoned property - Prima facie evidence.**

19 1. An affidavit under this section is prima facie evidence of abandonment if the affidavit is
20 made by:

21 a. The sheriff or sheriff's deputy of the county in which the mortgaged premises is
22 located, or of a building inspector, zoning administrator, housing official, or other
23 municipal or county official having jurisdiction over the mortgaged premises, and
24 the affidavit states the mortgaged premises are not actually occupied; or

25 b. The party foreclosing a mortgage, holding a sheriff's certificate, or an agent or
26 contractor of the party foreclosing the mortgage, and the affidavit states the
27 affiant has changed the locks on the mortgaged premises and a party having a
28 legal possessory right has not requested entrance to the premises for at least ten
29 days.

30 2. An affidavit under this section must include at least one of the following facts:

- 1 a. Windows or entrances to the premises are boarded or shuttered, or multiple
- 2 window panes are broken;
- 3 b. Doors to the premises are destroyed, broken, unhinged, or continuously
- 4 unlocked;
- 5 c. Gas, electric, or water service to the premises has been terminated;
- 6 d. Rubbish, trash, or debris has accumulated on the mortgaged premises;
- 7 e. Law enforcement has received at least two reports of trespassers, vandalism, or
- 8 other illegal acts on the premises; or
- 9 f. The premises is deteriorating and either below or in imminent danger of falling
- 10 below minimum community standards for public safety and sanitation.
- 11 3. This section applies only to mortgaged property that is:
- 12 a. Ten acres or less;
- 13 b. Improved with a residential dwelling that consists of fewer than five units and is
- 14 not a model home or under construction; and
- 15 c. Not used in agricultural production.

16 **SECTION 6. AMENDMENT.** Section 32-19-27 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **32-19-27. Proofs relative to notice - How made and filed.**

19 Proof of service of notice before foreclosure may be made by the return of a sheriff or other
20 officer, or by affidavit of the person making personal service or mailing such notice. Proof of
21 death of the title owner of record may be made by a certified copy of the death certificate or by
22 affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show
23 that the notice was properly served, service was attempted and refused or unclaimed, or the
24 property is abandoned may be made by certificate of a proper officer or of an abstractor or by
25 affidavit of any person having knowledge of the facts. Such proofs together with the notice
26 ~~shall~~must be filed with the complaint in any action for the foreclosure of a mortgage and
27 ~~shall~~must be recorded with the notice and certificate of sale in foreclosures by advertisement.