

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2292
(Senators Meyer, Holmberg, Patten)
(Representative O'Brien)

AN ACT to create and enact section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications; and to amend and reenact sections 35-03-14 and 35-03-15 of the North Dakota Century Code, relating to the expiration and extension of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-14 of the North Dakota Century Code is amended and reenacted as follows:

35-03-14. Expiration of real estate mortgages.

1. Unless extended or modified as specified in ~~section~~sections 35-03-15 and 35-03-15.1, the lien created by a mortgage of North Dakota real estate and all notice from the record ~~thereof~~ the lien expires as to all persons and for all purposes as follows:
 4. a. If the final maturity date is ascertainable from the record of the mortgage, the lien of the mortgage expires ten years after ~~that~~ the final maturity date.
 2. b. If the final maturity date of the mortgage is not ascertainable from the record, the lien of the mortgage expires ten years after the date the mortgage is filed for record in the office of the recorder.
2. Expiration of a mortgage lien under the ~~provisions~~ of this section is equivalent for all purposes to proper discharge of the mortgage of record, and execution or recordation of a discharge instrument is not necessary to terminate a mortgage lien ~~which~~ that has ~~so~~ expired. Satisfaction of mortgage in the common form may be recorded at any time.
3. Expiration of a mortgage lien as provided ~~herein~~ in this section occurs notwithstanding that the right to foreclose the mortgage has not been or might not be barred by the defense of limitations, whether tolled by nonresidence, disability, death, part payment, acknowledgment, extension, new promise, or waiver, and occurs notwithstanding any provisions of the Federal Soldiers' and Sailors' Civil Relief Act.

SECTION 2. AMENDMENT. Section 35-03-15 of the North Dakota Century Code is amended and reenacted as follows:

35-03-15. Extension of mortgage - Expiration delayed - Retroactivity.

1. Expiration of a real estate mortgage lien as provided in ~~section~~sections 35-03-14 and 35-03-15.1 does not occur if prior to the date ~~such~~ the expiration otherwise would become effective:
 4. a. An action or proceeding to foreclose is timely and properly commenced and the summons and complaint in ~~such~~ the action are duly filed with the clerk of the court having jurisdiction, and there is duly recorded in the office of the recorder a special notice of the pendency of ~~such~~ the action, or of the pendency of a proceeding to foreclose by advertisement;
 2. b. A proceeding to foreclose by advertisement is commenced and a special notice of the pendency of the proceeding is recorded in the office of the recorder.

- c. There is duly recorded in the office of the recorder the statutory notice of intention to foreclose with proof of service;
 3. d. A deed in lieu of foreclosure purporting to continue the mortgage lien unmerged in the fee title is duly recorded in the office of the recorder;
 4. e. Actual possession of the mortgaged property is taken and held by the owner of the mortgage, or the owner of the mortgage recorded a notice of enforcement of an assignment of rents related to the mortgaged property; or
 5. f. An instrument by or on behalf of ~~an interested party~~ the owner of the mortgage or the owner's authorized agent in affidavit form asserting extension and continuation of the mortgage lien is duly recorded in the office of the recorder of the county in which the affected mortgaged real estate or some portion thereof the affected mortgaged real estate is situated, provided that no such instrument is effective to postpone expiration of a mortgage lien under this section for more than ten years beyond the date expiration would have become effective under section 35-03-14, unless the lien was modified under section 35-03-15.1.
2. The provisions of section 35-03-14 and this section apply to all mortgages, including those executed or recorded before the effective date of ~~said section~~ section 35-03-14 and this section. The provisions of ~~said section~~ section 35-03-14 and this section do not bar any action, ~~preclude~~ except foreclosure or enforcement of any lien, or cause any mortgage lien to expire, until January 1, 1964.

SECTION 3. Section 35-03-15.1 of the North Dakota Century Code is created and enacted as follows:

35-03-15.1. Modification of mortgage - Expiration delayed.

1. Expiration of a real estate mortgage under section 35-03-14 does not occur if before the date the expiration would become effective a mortgage modification is recorded in the office of the recorder. A modified mortgage expires as provided under section 35-03-14, unless the modified mortgage is extended under section 35-03-15 or subsequently modified. If a modified mortgage is extended or subsequently modified, the mortgage expires as follows:
 - a. If the final maturity date is ascertainable from the record of the mortgage modification, the lien of the mortgage expires ten years after the final maturity date.
 - b. If the final maturity date of the mortgage is not ascertainable from the record of the original mortgage or a mortgage modification, the lien of the mortgage expires ten years after the date the last mortgage modification is filed for record in the office of the recorder.
2. As used in this section, "mortgage modification" means a written instrument amending at least one term of an original mortgage which:
 - a. References the original mortgage by recording date and document number; and
 - b. Is signed by the mortgagor, or the mortgagor's successor in interest, and the owner of the mortgage.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2292.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 89 Nays 1 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State