

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1366**

Introduced by

Representatives Vigesaa, D. Ruby, Weisz, Westlind

Senators Bakke, Clemens, Dwyer

A BILL for an Act to create and enact two new sections to chapter 35-13 of the North Dakota Century Code, relating to the sale of property subject to a repairman's lien and sale proceeds; and to amend and reenact sections 35-13-01, 35-13-05, and 35-13-06 of the North Dakota Century Code, relating to repairman's liens, notice requirements, and assignments.

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

**SECTION 1. AMENDMENT.** Section 35-13-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-13-01. Repairman's lien authorized.**

Any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business in this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, construction equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien on that property, and on any accessories and parts placed upon the property, for reasonable charges for work done ~~and~~, materials furnished, storage fees, and transportation costs, until the charges are paid. If the cost of repair ~~would exceed~~ would exceed ~~exceeds~~ four thousand dollars or thirty percent or, nine thousand dollars or thirty percent for property used for agricultural or construction purposes, of the value of the property, in the property's repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over ~~the mortgage or financing statement~~ any liens of record, the repairman shall give notice by registered or certified mail to the ~~recordholder of the mortgage or financing statement~~ lienholder of record of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

**SECTION 2. AMENDMENT.** Section 35-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**35-13-05. Notice before foreclosure ~~to prior mortgagee.~~**

1. A person holding a lien under this chapter on property ~~which has been~~ encumbered ~~previously by mortgage~~ by prior liens of record, before beginning any action or proceeding for the foreclosure of the lien, ~~or for sale of the property under sections 3 and 4 of this Act~~, shall give ~~twenty~~ ten days' notice in writing of the lienholder's intention to foreclose the lien, ~~or intention to initiate a sale of the property under sections 3 and 4 of this Act~~, to the ~~recordholder of the mortgage~~ lienholders of record and the owner of the property. The notice may be served by registered or certified mail addressed to the ~~recordholder~~ lienholders of record and property owner at the ~~recordholder's~~ lienholders and property owner's last-known post-office address.

2. The notice before foreclosure must include:

- a. A description of the property subject to the lien;
- b. The grounds for the lien;
- c. The name, address, and telephone number of the lienholder;
- d. The amount owed;
- e. The date after which the property subject to the lien will be offered for sale; and
- f. A statement that the recordholder or property owner may reclaim the property subject to the lien before the property is offered for sale by paying the amount owed.

**SECTION 3. AMENDMENT.** Section 35-13-06 of the North Dakota Century Code is amended and reenacted as follows:

**35-13-06. Mortgagee may pay amount of lien - Assignment of lien.**

The holder ~~recordholder of any mortgage~~ record lienholder of any lien against property on which a lien has been filed under the provisions of this chapter may pay the amount due on the lien at any time ~~previous to~~ before a sale upon the foreclosure ~~thereof~~ of the property. Upon payment of the lien by a mortgageholder ~~recordholder~~ lienholder, the holder of the lien shall assign it to such mortgageholder ~~recordholder~~ lienholder, and thereafter the mortgageholder ~~recordholder then~~ lienholder then is entitled to all the rights which the person filing the lien had before the lien was paid.

~~**SECTION 4. A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:**~~

**Sale of property.**

~~1.— A lienholder in possession of property may sell the property as provided under this chapter if:~~

~~a.— The recordholder of the property subject to the lien does not pay the amount due pursuant to section 35-13-06 within the time specified under section 35-13-05; or~~

~~b.— The property owner does not reclaim the property before the date the property is offered for sale under section 35-13-05.~~

~~2.— A lienholder that sells property under this chapter may retain from the sale proceeds:~~

~~a.— The amount owed on the lien;~~

~~b.— The reasonable costs of transporting, storing, and maintaining the property;~~

~~c.— The notice and publication costs incurred by the lienholder under this chapter;~~

~~and~~

~~d.— The costs associated with the sale of the property.~~

~~3.— After a lienholder has been compensated as authorized under subsection 2, the lienholder shall remit any remaining proceeds to entitled lienholders and secured parties.~~

~~4.— If sale proceeds remain after satisfying entitled lienholders and secured parties under subsection 3, the lienholder shall hold the remaining sale proceeds for the benefit of the property owner for ninety days after the date of the sale. If the property owner fails to claim the remaining sale proceeds within the ninety-day period, the lienholder shall deliver the proceeds to the administrator of the state abandoned property office in accordance with chapter 47-30.1.~~

**SECTION 5.** A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:

**Sale proceeds – Vehicle title.**

~~If a lien is not satisfied under subsection 1 of section 4 of this Act, a lienholder in possession of a motor vehicle that is subject to chapter 39-05 may obtain from the department of transportation a certificate of title for the motor vehicle, free and clear of all liens, encumbrances, and other claims of ownership. Upon receipt of the title to the motor vehicle, the lienholder shall remove and destroy the original number plates displayed on the motor vehicle.~~

1        **SECTION 1. AMENDMENT.** Section 35-13-04 of the North Dakota Century Code is amended  
2        and reenacted as follows:

3        **35-13-04. Priority of lien.**

4        A lien obtained under this chapter has priority over all other liens, chattel mortgages, or  
5        encumbrances against the personal property upon which the lien is secured, but if the repairman  
6        has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record  
7        as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or~~  
8        ~~financing statement~~ lienholder of record, within five days after receiving such notice,  
9        communicated in writing to the repairman an objection to all the proposed repair costs becoming  
10       a lien against the property with priority over the ~~mortgage or financing statement~~ existing  
11       lienholder of record, then only that portion of the repairman's lien up to four thousand dollars or  
12       thirty percent, or nine thousand dollars or thirty percent for property used for agricultural or  
13       construction purposes, of the retail value, whichever is greater, in the property's repaired  
14       condition, has priority over the ~~mortgage or financing statement~~ existing lienholder of record.

15       **SECTION 2.** Section 35-13-07 of the North Dakota Century Code is created and enacted  
16       as follows:

17       **35-13-07. Non-judicial disposition of property.**

18       The person holding a lien under this chapter shall have the rights of a secured party under  
19       Article 9 of the Uniform Commercial code for purposes of non-judicial disposition of the  
20       property. A person holding a lien under this chapter who chooses to use non-judicial  
21       disposition of the property shall dispose property in the manner prescribed for security  
22       interests under Article 9 of the Uniform Commercial Code.