

Mortgages

Expiration – Extension – Modification

NDBA has proposed amendments to sections 35-03-14 and 35-03-15 of the North Dakota Century Code, relating to the expiration and extension of mortgage liens; as well as the creation of section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications.

Background and Issue

[Section 35-03-14](#) provides the date of expiration for mortgage liens, while [section 35-03-15](#) provides occurrences that extend the expiration date.

Old case law indicates that under prior versions of 35-03-14, the expired mortgage was simply cleared from the record, but remained enforceable between the direct parties to the instrument.¹ The beneficiaries of this would have been subsequent purchasers or encumbrancers who would be protected by the empty record. The need for this bill is a change from this being a statute that allows title searchers to ignore stale mortgages to a statute that indicates they are expired as to all persons for all time.

The point of the amendments is to prevent an inequitable result of a mortgage between the parties being “expired” under the statute and unenforceable as between the parties.

This issue comes up with a construction mortgage for a 1-year period that is then modified to extend the term into permanent financing; or where the same mortgage is modified several times.

Amendment to 35-03-14

As stated, section 35-03-14 provides the date of expiration for mortgage liens. The calculation of the expiration date is currently dependent upon whether an extension has occurred pursuant to 35-03-15. The amendment simply adds a reference to the newly proposed [section 35-03-](#)

[15.1](#) (mortgage modifications) as an exception to the general rule regarding mortgage expiration.

Amendment to 35-03-15

Section 35-03-15 provides that mortgage liens will not expire per 35-03-14 if certain events have occurred prior to the expiration date calculated in 35-03-14. Similar to 35-03-14, this section has been amended to refer to the newly proposed section 35-03-15.1. The amendment includes the mortgagor’s recordation of a notice of enforcement of an assignment of rents related to the mortgaged property as an event extending the expiration date.

Creation of 35-03-15.1

This section first and foremost recognizes mortgage modifications and defines them as a written instrument amending at least one term of an original mortgage which both references the original mortgage by recording date and document number and is signed by the mortgagor and mortgagee.

It also clarifies that the lien of the mortgage will expire 10 years after the maturity date unless the mortgage is modified to extend the maturity date, in which case the lien will expire 10 years from the extended maturity date; or, if not ascertainable from the record, that expiration shall occur 10 years from the recording of the modification if such modification is recorded within 10 years of the recording of the original mortgage. Minor changes to title standard 8-01 are predicted.

¹ See *Magnuson v. Breher*, 284 N.W. 853, 855 (N.D. 1939) (“The evident purpose of the statute is to clear the public record of old and unrenewed mortgages, not to bar action upon enforceable existing ones... Thenceforth, so far as the

mortgage is concerned, it is as though it had never been recorded. Otherwise there is no change in its effect either as between the parties to the contract or as to third persons.”).