

## **CHAPTER 9-12 EXTINCTION OF OBLIGATION**

### **9-12-01. Extinction by full performance.**

Upon acceptance by the creditor, full performance extinguishes an obligation if done by the party whose duty it is to perform it or by any other person on that party's behalf and with that party's assent.

### **9-12-02. Performance of obligation to one person - Extinguishment - Exception.**

An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership which is regulated by the provisions of title 60.

### **9-12-03. Performance of obligation by one person.**

Performance of an obligation by one of several persons who are liable jointly under it extinguishes the liability of all persons who are liable jointly thereon.

### **9-12-04. Performance directed by creditor.**

If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform the debtor's obligation in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of such performance.

### **9-12-05. Partial performance - Extinction pro tanto.**

A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof if the benefit of such performance is retained voluntarily by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring the creditor's own property, the creditor's retention thereof is not presumed to be voluntary.

### **9-12-06. Payment defined.**

Performance of an obligation for the delivery of money only is called payment.

### **9-12-07. Performance when there are several obligations - Application.**

When a debtor under several obligations to another does an act by way of performance, in whole or in part, which is applicable equally to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of the performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be applied in such manner.
2. If no such application is then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation the performance of which was due to the creditor from the debtor at the time of such performance, except that if similar obligations were due to the creditor both individually and as a trustee, unless otherwise directed by the debtor, the creditor shall apply the performance to the extinction of all such obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.
3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order, and if there is more than one obligation of a particular class, to the extinction of all in that class ratably.
  - a. Of interest due at the time of the performance.
  - b. Of principal due at the time of performance.
  - c. Of the obligation earliest in date of maturity.
  - d. Of an obligation not secured by a lien or collateral undertaking.

- e. Of an obligation secured by a lien or collateral undertaking.

**9-12-08. Extinction by offer - Exception.**

An obligation is extinguished by an offer of performance made in conformity to the provisions set out in this chapter and with intent to extinguish the obligation. An offer of partial performance, however, is of no effect.

**9-12-09. Offer of performance - Assent of debtor.**

An offer of performance must be made by the debtor or by some person on the debtor's behalf and with the debtor's assent.

**9-12-10. Offer of performance made to creditor or authorized agent.**

An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation if such creditor or authorized person is present at the place where the offer may be made, and if not, wherever the creditor may be found.

**9-12-11. Offer of performance - Place made.**

In the absence of an express provision to the contrary, an offer of performance may be made at the option of the debtor:

1. At any place appointed by the creditor;
2. Wherever the person to whom the offer ought to be made can be found; or
3. If such person cannot with reasonable diligence be found within this state and within a reasonable distance from that person's residence or place of business, or if that person evades the debtor, at that person's residence or place of business if the same with reasonable diligence can be found within the state, or if this cannot be done, then at any place within this state.

**9-12-12. Time for performance fixed.**

When an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

**9-12-13. Time for performance not fixed.**

When an obligation does not fix a time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

**9-12-14. Offer of performance - Good faith.**

An offer of performance must be made in good faith and in such manner as is most likely under the circumstances to benefit the creditor.

**9-12-15. Offer of performance - Free from condition.**

An offer of performance must be free from any condition which the creditor is not bound on the creditor's part to perform.

**9-12-16. Offer of performance - When effective.**

An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

**9-12-17. Refusal of offer - Production unnecessary.**

The thing to be delivered, if any, need not in any case actually be produced upon an offer of performance unless the offer is accepted.

**9-12-18. Offer of performance - Mode - Waiver of objections.**

The creditor must make objections to the mode of an offer of performance at the time it is made to the creditor. If this is not done, any objection which could have been obviated at that time is waived by the creditor's failure to make the same.

**9-12-19. Offer of performance - When title passes.**

The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor, at the time the offer is made, signifies the debtor's intention to that effect.

**9-12-20. Offer of performance - Definite object.**

A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

**9-12-21. Offer of performance - Contingency.**

When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on the debtor's part, the debtor may make the debtor's offer to depend upon the due performance of such condition.

**9-12-22. Performance - Demand for written receipt.**

A debtor has a right to require from the debtor's creditor a written receipt for any property delivered in performance of the debtor's obligation.

**9-12-23. Performance after due date.**

When delay in performance is capable of exact and entire compensation and time has not been declared expressly to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

**9-12-24. Deposit extinguishes obligation.**

An obligation for the payment of money is extinguished by a due offer of payment if the amount immediately is deposited in the name of the creditor with some bank of deposit of good repute within this state, and notice thereof is given to the creditor.

**9-12-25. Offer and deposit - Results.**

An obligation for the delivery of money or property or for the conveyance of property is not discharged by an offer of performance, nor are any of its incidents affected thereby, unless:

1. If the thing offered is money, the same is deposited according to the provisions of section 9-12-24 and notice of such deposit is given to the creditor.
2. If the thing offered is something other than money, the same is deposited for the creditor with some depository of good repute at the place of performance and notice of such deposit is given to the creditor.

After such deposit and notice, the thing deposited is at the risk and expense of the creditor.

**9-12-26. Deposit of thing offered - How held.**

The person offering a thing other than money by way of performance, if that person means to treat it as belonging to the creditor, shall retain it as a depository for hire until:

1. The creditor accepts it;
2. That person has given reasonable notice to the creditor that that person will retain it no longer; or
3. That person has deposited it with such suitable depository therefor as that person is able to find with the exercise of reasonable diligence.

**9-12-27. Creditor as gratuitous depositary.**

If anything is given to a creditor by way of performance which the creditor refuses to accept as such, the creditor is not bound to return it without demand, but if the creditor retains it, the creditor is a gratuitous depositary thereof.

**9-12-28. Deposit in special fund to extinguish lien, encumbrance, or cloud affecting or relating to the title to real property.**

Any lien, encumbrance, or cloud affecting or related to the title to real property, when the only obligation concerns the payment of a sum certain in money to a specified creditor when the creditor, or the creditor's heirs, successors, or assigns cannot be located, may be extinguished as provided by this section and section 9-12-29. The debtor shall deposit with the county treasurer the debtor's affidavit to the effect that the debtor has made a careful, diligent, and good-faith search for the creditor and the creditor cannot be found. The debtor shall also deposit with the county treasurer the full amount of the debt, including all interest accumulated to the date of the deposit. The affidavit together with notice of the deposit, specifying the amount of the deposit, specifying that the purpose of the deposit is to discharge the lien, encumbrance, or cloud, and specifically describing the real property, must be published at the expense of the debtor once a week for three successive weeks in the official county newspaper in all counties in which the real property is situated.

**9-12-29. Claim of money by creditor - Extinguishment of lien.**

The creditor is entitled to claim the amount of money from the county treasurer within nine months of the date of deposit upon a showing to the county treasurer of a satisfaction of the lien, encumbrance, or cloud which includes an indication by the recorder that the satisfaction has been duly recorded. If the creditor does not claim the money in nine months from the date of first publication of the notice, the money, a copy of the debtor's affidavit, and a copy of the published notice must be forwarded by the county treasurer to the state land commissioner for deposit to the credit of the state of North Dakota for the use and benefit of the common schools trust fund of the state. At the same time these items are forwarded to the state land commissioner, the county treasurer shall record in the office of the recorder a notice to the effect that the lien, encumbrance, or cloud affecting or related to the title to the real property, giving the specific legal description of the property, has been discharged by the procedures set out in section 9-12-28 and this section. The debtor shall pay the recorder's fees for recording the county treasurer's notice.

At any time after the original nine-month period, the creditor, or the creditor's heirs, successors, or assigns, may claim the full amount of the original deposit without any interest or penalty from the state administrator of abandoned property in the manner specified in chapter 47-30.2 for claiming the proceeds of other abandoned and unclaimed property.