CHAPTER 32-19
FORECLOSURE OF REAL ESTATE MORTGAGES BY ACTION

32-19-01. Action to foreclose mortgage on real estate authorized.

The plaintiff shall bring an action in district court for the foreclosure of a mortgage upon real property.

32-19-02. Power of attorney required - Exceptions.

Repealed by S.L. 1981, ch. 355, § 1.

32-19-03. Who subject to deficiency judgment.

The plaintiff may not obtain a deficiency judgment in a foreclosure of residential property with four or fewer units of up to forty contiguous acres [16.19 hectares] containing a residence occupied by the owner as a homestead. The plaintiff may obtain a deficiency judgment on agricultural land of more than forty acres [16.19 hectares] but solely for the difference between the amount of the debt and the fair market value of the land at the time of commencement of the action. The plaintiff may obtain a deficiency judgment in all other cases for the difference between the appraised value, as determined by a licensed appraiser appointed by the court at the request of the plaintiff, and the amount determined due. The cost of the appraisal is an allowable cost in the foreclosure action.

32-19-04. What complaint shall state.

In an action for the foreclosure of a mortgage, the complaint must state sufficient allegations to identify the mortgage being foreclosed, to establish the applicable redemption period, and to determine whether a deficiency judgment will be sought and against which parties.

32-19-05. When judgment at law obtained.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-06. What judgment must contain.

In any action for the foreclosure of a real estate mortgage, the court shall render judgment for the amount found to be due and the costs of the action, and shall order a sale of the premises to pay the amount adjudged to be due. The court may order delivery of the possession of the premises to the purchaser after the expiration of the redemption period unless otherwise ordered by the court pursuant to section 32-19-19. The judgment must provide that during the redemption period the debtor or owner of the premises is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19.

32-19-06.1. Deficiency judgments on commercial real property.

In an action involving the foreclosure of a mortgage on commercial real property, the plaintiff shall state in the pleading whether a deficiency judgment will be sought and if sought shall identify the parties claimed to be personally liable and demand a deficiency judgment against those parties. Within twenty days after the completion of the appraisal, the appraiser shall provide the plaintiff and file with the clerk of court a written report, including the fair market value of the property. The plaintiff shall mail a copy of the appraisal to a party that may be personally liable at the party's last-known residences or business addresses by first-class mail. At the time of the entry of the judgment, the court shall include in its findings of fact the fair market value of the property and the amount of any prior liens on the property. If the fair market value and the amount of any prior liens are less than the amount found to be due to the plaintiff, the court shall identify each person who is liable for any deficiency after the sheriff's sale. The foreclosure judgment must be the balance then due and owing on the mortgage, plus costs. Upon entry of an order confirming the sheriff's sale, the clerk of court shall note the amount bid at the sheriff's sale, less the cost of the sheriff's sale as a credit on the foreclosure judgment, which credit may not be less than the fair market value established by the court. Any amount actually paid in excess of the foreclosure judgment constitutes surplus payable to the debtor pursuant to section

28-23-09. The clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable, then the plaintiff may pursue the same remedies to collect the deficiency judgment as are available to collect other money judgments. The deficiency judgment must be for the entire amount found to be due the foreclosing party in the foreclosure judgment, together with interest at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court. In addition to the appraisal, the court in its determination of the fair market value of the property may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

32-19-06.2. Deficiency judgments on agricultural land.

If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though that party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may only be enforced by execution within three years from the date of entry of the judgment. If the judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

32-19-07. Other suits permitted.

Notwithstanding any other provision of state law, if a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after August 1, 1993, a mortgagee may bring an action on the promissory note if the mortgagee waives the right to foreclose the mortgage given to secure the note. Allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note applies only to residential real property consisting of four or fewer residential units.

32-19-08. Sales made by whom and where - Notice.

A sale of mortgaged premises under a judgment of foreclosure must be made in the county where the premises or some part of the premises are situated. The sale must be made by the sheriff of that county, the sheriff's deputy, or by some person appointed by the court for that purpose, upon the notice and in the manner prescribed by law for the sale of real property upon execution.

32-19-09. Certificate of sale - Deed and effect.

At the sheriff's sale, the person making the sale must give to the purchaser a certificate of sale as provided by section 28-23-11, and at the expiration of the time for the redemption, if not redeemed, the person making the sale, or the successor in office, must give the purchaser, the purchaser's heirs, or assigns, or to any person who has acquired the title of the purchaser by redemption or otherwise, a deed. The deed vests in the grantee all the right, title, and interest of the mortgagor in and to the property sold, at the time the mortgage was executed or subsequently acquired by the mortgagor and is a bar to all claim, right, or equity of redemption in or to the property by the parties to the action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action.

32-19-10. Application of proceeds.

The proceeds of every foreclosure sale must be applied to the discharge of the debt adjudged by the court to be due and of the costs, and if there is any surplus, it must be brought into court subject to the order of the court. If the surplus is less than one thousand dollars and an application to receive the surplus is not filed with the court within sixty days after deposit, the court shall order the funds forfeited to the general fund of the county.

32-19-11. When surplus invested.

If the surplus is one thousand dollars or more and is not applied for within ninety days, the court may direct the same to be deposited at interest for benefit of the defendant, the defendant's representatives, or assigns, subject to the order of the court.

32-19-12. Complaint dismissed on payment of installments due.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-13. When payment stays proceedings.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-14. Referee to view premises.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-15. Successive judgments and sales.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-16. Sale of whole on first default.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-17. Rebate on undue part.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-18. Redemption.

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

32-19-18.1. Payment to redeem.

A person redeeming from a sheriff's sale may pay the required amount either to the holder of the certificate or to the sheriff. If there is a dispute as to the amount required to redeem, the person attempting to redeem shall deposit with the sheriff the amount the person calculates to be due and a written description of the basis for the calculation. The deposit has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount determined to be due as of that date.

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

The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a

mortgage on the real property and until the expiration of the time allowed for redemption. If at the time of the commencement of the foreclosure action and at any time before the sheriff's sale the mortgagee, or after the sheriff's sale the holder of the sheriff's certificate of sale, reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may allege abandonment in the complaint or petition the court to determine abandonment. If by petition, a notice of hearing must be sent by mail to the last-known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court determines the real property is abandoned, the court may eliminate the redemption period in the foreclosure judgment or, upon petition, grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may consider remedies to prevent waste in a foreclosure action or upon a petition for abandonment. The provisions of this section concerning abandoned real property do not apply to agricultural property as defined by section 57-02-01.

32-19-20. Notice before foreclosure.

At least thirty days and not more than ninety days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate.

32-19-21. Contents of notice.

The notice before foreclosure shall contain:

1. A description of the real estate.
2. The date and amount of the mortgage.
3. The amount due to bring the installments of principal and interest current as of a date specified, and the amount advanced by the mortgagee for taxes, insurance, and maintenance, separately itemized.
4. A statement that if the amount due is not paid within thirty days from the date of the mailing or service of the notice proceedings will be commenced to foreclose the mortgage.

32-19-22. Notice may be served by mail.

The notice before foreclosure may be served by mail, as provided in rule 4 of the North Dakota Rules of Civil Procedure, addressed to the owner of record at the owner's post-office address in the mortgage or by the records in the chain of title of the recorder of the county where the real estate is situated. If the post-office address is not shown in the mortgage or in the records, the notice may be served as provided in rule 4 of the North Dakota Rules of Civil Procedure, addressed to the owner of record at the post office nearest any part or tract of the real estate.

32-19-23. When notice not required.

1. If the record title to real estate is in the name of a deceased person, notice before foreclosure need not be served unless a personal representative of the estate is appointed in the county in which the real estate is situated. The certificate of the judge or clerk of the district court serving the county in which the real estate is situated stating that a personal representative has not been appointed is sufficient evidence of that fact.
2. Actual service of the notice before foreclosure is not required if the property is abandoned as provided under section 32-19-23.1, or if service by mail as provided in this chapter has been attempted three times and the attempted service is returned as refused or unclaimed.

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

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

a. The sheriff or sheriff's deputy of the county in which the mortgaged premises is located, or of a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises, and the affidavit states the mortgaged premises are not actually occupied; or
b. The party foreclosing a mortgage, holding a sheriff's certificate, or an agent or contractor of the party foreclosing the mortgage, and the affidavit states the affiant has changed the locks on the mortgaged premises and a party having a legal possessory right has not requested entrance to the premises for at least ten days.

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

32-19-24. Service of notice on personal representative.

If a personal representative of the estate of the deceased owner has been appointed in the county where the real estate is situated, the notice before foreclosure must be served upon the personal representative. Service may be made by registered mail, as provided in rule 4 of the North Dakota Rules of Civil Procedure, addressed to the personal representative's post-office address as shown by the records of the district court by which the personal representative was appointed.

32-19-25. Notice may be served personally.

Service of the notice before foreclosure may be made upon the title owner of record or upon the personal representative of the owner's estate by personal service within or without this state in the manner provided by law for the service of a summons in a civil action.

32-19-26. Actual receipt of notice always sufficient.

In any case, service of the notice before foreclosure is sufficient if it actually was received by the title owner or by the personal representative of the owner's estate. A United States post-office registry return receipt showing that the envelope containing the notice has been delivered to the record title owner or to the personal representative of the owner's estate, or to the agent of either, is prima facie evidence that the owner or the owner's administrator or executor received the same.

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

Proof of service of notice before foreclosure may be made by the return of a sheriff or other officer, or by affidavit of the person making personal service or mailing such notice. Proof of death of the title owner of record may be made by a certified copy of the death certificate or by affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show the notice was properly served, service was attempted and refused or unclaimed, or the property is abandoned may be made by certificate of a proper officer or of an abstracter or by affidavit of any person having knowledge of the facts. Such proofs together with the notice must

be filed with the complaint in any action for the foreclosure of a mortgage and must be recorded with the notice and certificate of sale in foreclosures by advertisement.

32-19-28. Default may be cured.

If the record title owner or the personal representative of the owner's estate, within thirty days from the service of notice before foreclosure, performs the conditions or complies with the provisions upon which default in the mortgage occurred, the mortgage must be reinstated and remain in full force and effect the same as though a default had not occurred in the mortgage.

32-19-29. Summons - How served.

The summons in a foreclosure action must be served in the same manner as in any civil action.

32-19-30. Service by publication - How made.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-31. Summons to be published.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-32. Copy of summons and complaint to be mailed.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-33. Personal service equivalent to publication.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-34. Personal service of summons and complaint may be made in any event.

Repealed by S.L. 2005, ch. 302, § 30.

32-19-35. Service by publication - When completed.

Service by publication is completed upon the expiration of thirty-six days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant outside of the state, upon the expiration of fifteen days from such service.

32-19-36. Personal service of summons - How made.

Personal service of the summons may be made in the manner provided by the North Dakota Rules of Civil Procedure.

32-19-37. Unknown defendants - How joined.

A person having or claiming an estate or interest in, or lien or encumbrance upon, the property described in the complaint and not in possession and not appearing of record in the office of the recorder, the clerk of the district court, or the county auditor of the county in which the land described in the complaint is situated may be proceeded against as persons unknown, and any order, judgment, or decree entered in a foreclosure action is valid and binding on the unknown persons, whether of age or minors, and on those claiming under the unknown persons. If any unknown persons are joined as defendants, the unknown persons must be designated in the summons as: "And all persons unknown, claiming any estate or interest in, or lien or encumbrance upon, the real estate described in the complaint". As to unknown defendants the plaintiff at the time of filing the summons and complaint shall file an affidavit substantially in the following form:

State of North Dakota)
) ss.
County of _____)

_____ being duly sworn says that the affiant is the (attorney for) _____ plaintiff in the above entitled action:

Affiant further says that as to all defendants proceeded against as "And all persons unknown, claiming any estate or interest in, or lien or encumbrance upon, the real estate described in the complaint" the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the recorder, the clerk of the district court, or the county auditor of the county of _____, that being the county in which the land is situated, and affiant does not know and is unable to ascertain the names, residences, or post-office addresses of any of the persons who are proceeded against as unknown persons defendant; that the relief sought in this action consists wholly or partially in excluding the unknown defendants from any interest in or lien upon the real estate described in the complaint except the right of redemption as provided by law.

32-19-38. What the summons to contain.

The summons in a foreclosure action in which the persons unknown are named as defendants must contain, or have appended to it, a statement substantially as follows:

This action relates to the foreclosure of a mortgage or lien, as the case may be, upon (here describe the real estate involved in the action).

32-19-39. Judgment and decrees to be binding against whom.

All orders, judgments, or decrees entered in any action are binding upon each person proceeded against as a defendant, whether of age or minors, and each person claiming by, through, or under a defendant after the commencement of the action. The same are binding upon whose interests did not appear of record in the office of the recorder, county auditor, or clerk of the district court of the county of the action at the time of the commencement of the action.

32-19-40. Persons holding unrecorded conveyance need not be made parties, when.

In any action to foreclose a mortgage or other lien upon real property, a person holding a conveyance or having a lien upon the property, if such conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not need to be made a party to the action, and the judgment rendered and the proceedings in and of the action are conclusive as if the party had been made a party to the action.

32-19-41. Abandoned personal property - Disposal by record title owner.

1. If real property is adjudicated to be abandoned by an affidavit under section 32-19-23.1 or by a petition under section 32-19-19, the grantee in a sheriff's deed that has been recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of, without legal process, any personal property left on the real property.
2. If the real property is not adjudicated to be abandoned by an affidavit under section 32-19-23.1 or by a petition under section 32-19-19, the grantee may retain and dispose of, without legal process, any personal property left on the real property thirty days after the issuance of a sheriff's deed.
3. If the total estimated value of personal property under subsection 2 is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing.
4. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted.
5. This section applies only to tracts of land not exceeding forty acres [16.19 hectares].
6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.2.