

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2232
(Senators Holmberg, Traynor, Triplett)
(Representative Kretschmar)

AN ACT to create and enact section 32-19-06.2 of the North Dakota Century Code, relating to deficiency judgments on agricultural land; to amend and reenact sections 28-23-04, 28-24-02, 32-19-01, 32-19-03, 32-19-04, 32-19-06, 32-19-06.1, 32-19-07, 32-19-08, 32-19-09, 32-19-10, 32-19-11, 32-19-18, 32-19-20, 32-19-21, 32-19-22, 32-19-23, 32-19-24, 32-19-25, 32-19-26, 32-19-28, 32-19-29, 32-19-37, 32-19-38, 32-19-39, 32-19-40, and 32-19-41 and subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code, relating to foreclosure of a mortgage; and to repeal sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code, relating to foreclosure of a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to the making of the sale; and
2. In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 ~~or 32-19.1~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

SECTION 2. AMENDMENT. Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year ~~(six months in redemptions under subsection 4 of section 32-19.1-04)~~ after the sale on paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest.

SECTION 3. AMENDMENT. Section 32-19-01 of the North Dakota Century Code is amended and reenacted as follows:

32-19-01. Action to foreclose mortgage on real estate authorized. ~~An~~ The plaintiff shall bring an action ~~may be brought in the district court for the foreclosure or satisfaction of a mortgage upon real property in accordance with the provisions of this chapter.~~

SECTION 4. AMENDMENT. Section 32-19-03 of the North Dakota Century Code is amended and reenacted as follows:

32-19-03. Who subject to deficiency judgment. ~~If the mortgage debt is secured by the obligation, or other evidence of debt, of any person other than the mortgagor, the plaintiff may make such other person a party to the action and the court may render judgment for the balance of the debt remaining unsatisfied after a sale of the mortgaged premises as against such other person and may enforce such judgment as in other cases by execution or other process. Nothing elsewhere contained in this chapter shall be construed to postpone or affect any remedies the creditor may have against any person personally liable for the debt, other than the mortgagor or purchaser and the successors in interest of either. 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.~~

SECTION 5. AMENDMENT. Section 32-19-04 of the North Dakota Century Code is amended and reenacted as follows:

32-19-04. What complaint shall state. ~~In an action for the foreclosure or satisfaction of a mortgage, the complaint shall must state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof, and if there have been, whether any and what part thereof has been collected. The plaintiff shall also state in the complaint whether the plaintiff will in a later and separate action demand judgment for any sufficient allegations to identify the mortgage being foreclosed, to establish the applicable redemption period, and to determine whether a deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage judgment will be sought and against which parties.~~

SECTION 6. AMENDMENT. Section 32-19-06 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06. What judgment must contain ~~Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises~~ Determination of fair value of mortgaged real property. ~~In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court may shall render judgment for the amount found to be due at the time of the rendition of the judgment, and the costs of the action, and may shall order and decree a sale of the premises described in the mortgage or contract or that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court may order and compel delivery of the possession of the premises to the purchaser at the sale, but in no case may the possession of the premises sold be delivered until after the expiration of the one-year redemption period unless otherwise allowed ordered by the court pursuant to section 32-19-19. The court shall direct, and 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. The court may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been~~

~~given to secure a debt contracted after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if the plaintiff has so indicated in the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in the separate action, may render a deficiency judgment against the party or parties personally liable, but the deficiency judgment 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 value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there is no presumption that the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where the fair value of the mortgaged premises is to be determined must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At that time and place the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained must be enforced by execution as provided by law, except that no execution may be enforced after three years from the date of the rendition of the deficiency judgment. The mortgagee or vendor or the successor in interest of either is not permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which the debt and the costs of the action exceed the fair value of the mortgaged premises. The fair value must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment must be enforced by execution as provided by law except that the execution may not be enforced after three years after the date of the rendition of the judgment.~~

SECTION 7. AMENDMENT. Section 32-19-06.1 of the North Dakota Century Code is amended and reenacted as follows:

32-19-06.1. Deficiency judgments on commercial real property. ~~Notwithstanding any other provision of law, a mortgagee holding a mortgage on commercial real property may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after August 1, 1993, and any successor in interest of the mortgagor who has assumed the debt secured by the mortgage. In an action involving the foreclosure of a mortgage on commercial real property, the foreclosing party plaintiff shall state in its the pleading whether a deficiency judgment will be sought; and if sought shall identify the parties claimed to be personally liable for payment of the debt secured by the mortgage being foreclosed; and demand a deficiency judgment against those parties. Within ninety twenty days after the later of the filing or service of the pleading seeking the foreclosure of a mortgage, the party seeking a deficiency judgment on commercial real property shall file with the clerk of district court a notice for an completion of the appraisal of the real property by a licensed or certified, the appraiser and 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 request to the parties claimed to be liable for a deficiency, of the appraisal to a party that may be personally liable at their last known the party's last-known residences or business addresses by first-class mail. The notice must contain the foreclosing party's agreement to pay the cost of the appraisal, which must be included as a cost allowed the foreclosing party if judgment is entered granting foreclosure. Upon the filing of the notice, the foreclosing party shall arrange for an appraisal of the property. Within twenty days after completion of the appraisal, the appraiser shall provide to the foreclosing party and file with the clerk of court a written report indicating the fair market value of the commercial real property. The foreclosing party shall also mail copies of the report to the parties claimed to be personally liable to their last known~~

~~residences or business addresses by first class mail. Within fifteen days of the later of the filing or mailing of the report of the foreclosing party's appraisal, any party may file a notice of intention to obtain an additional appraisal to be conducted by a licensed or certified appraiser at the party's own expense. The additional appraisal report must be served upon the foreclosing party and filed within thirty days of the filing of the notice of appraisal and must be considered, with other appraisal reports filed, in the determination by the court of the fair market value of the property which determination as to fair market value must be made as of the date of the foreclosing party's appraisal. 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, if the fair market value is less than the amount found to be due the foreclosing party, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment 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 in an amount equal to the balance then due and owing on the mortgage, plus costs taxed by the court. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited on the foreclosure judgment, which credit must be at least 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 in any event be less than the fair market value established by the court. However, only the Any amount actually paid in excess of the foreclosure judgment may constitute constitutes surplus payable to the debtor pursuant to section 28-23-09. At any time after the order confirming sale, the The clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable for the deficiency. The foreclosing party, then the plaintiff may thereafter 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 on the amount of the foreclosure judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. The deficiency judgment must bear interest at the same rate as the foreclosure judgment. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property, whose primary use is determined as of the time the mortgage is executed, as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial 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, reduced by the value of any liens paramount to the lien of the foreclosing party. In addition to the appraisals filed by the parties 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.~~

~~The provisions of this section are not available unless the obligation and mortgage upon which the deficiency liability is based contain language located immediately above the signatures of the parties advising them that the mortgagee has the right to proceed to obtain and collect a deficiency judgment, together with foreclosure of the real property mortgaged under applicable laws.~~

SECTION 8. Section 32-19-06.2 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 9. AMENDMENT. Section 32-19-07 of the North Dakota Century Code is amended and reenacted as follows:

32-19-07. Other suits permitted. ~~Neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made between July 1, 1937, and July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given between July 1, 1937, and July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract. Except as otherwise provided in sections 32-19-04 and 32-19-06, neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made after July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given after July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract except as provided by sections 32-19-04 and 32-19-06. However, notwithstanding Notwithstanding any other provisions provision of state law, where 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 ~~or other obligation of the mortgagor~~ if the mortgagee waives the right to foreclose the mortgage given to secure the note ~~or other obligation.~~ The provisions of this section allowing. 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 or other obligation apply applies only to residential real property consisting of four or fewer residential units.~~

SECTION 10. AMENDMENT. Section 32-19-08 of the North Dakota Century Code is amended and reenacted as follows:

32-19-08. Sales made by whom and where - Notice. ~~All sales~~ A sale of mortgaged premises under a judgment of foreclosure must be made in the county where the premises, or some part of ~~them,~~ the premises are situated, The sale must be made by the sheriff of that county ~~or,~~ 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.

SECTION 11. AMENDMENT. Section 32-19-09 of the North Dakota Century Code is amended and reenacted as follows:

32-19-09. Certificate of sale - Deed and effect. ~~Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter~~ At the sheriff's sale, the officer ~~or other 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 ~~of such property,~~ if ~~the same is~~ not redeemed, the person ~~or officer~~ making the sale, or the successor in office, ~~or other officer appointed by the court,~~ must ~~make to give~~ the purchaser, the purchaser's heirs, or assigns, or to any person who has acquired the title of ~~such~~ the purchaser by redemption or otherwise, a deed ~~or deeds of such the property.~~ Such. The deed shall vest 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 ~~shall be~~ is a bar to all claim, right, or equity of redemption in or to the property by the parties to ~~such 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 ~~in which such judgment was rendered.~~

SECTION 12. AMENDMENT. Section 32-19-10 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~for the use of the defendant or of the person entitled thereto,~~ 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.

SECTION 13. AMENDMENT. Section 32-19-11 of the North Dakota Century Code is amended and reenacted as follows:

32-19-11. When surplus invested. ~~If the surplus upon a foreclosure sale, or any part thereof, shall remain in court for the term of three months without being applied for~~ is one thousand dollars or more and is not applied for within ninety days, ~~the judge of the district court may direct the same to be put out~~ deposited at interest for benefit of the defendant, the defendant's representatives, or assigns, subject to the order of the court.

SECTION 14. AMENDMENT. Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

32-19-18. Redemption. ~~All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed at any time within one year after such sale as prescribed by chapter 28-24. 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 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.~~

SECTION 15. AMENDMENT. Section 32-19-20 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~described in the mortgage as shown by the records in the office of the recorder of the county in which such real estate is situated.~~

SECTION 16. AMENDMENT. Section 32-19-21 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~for~~ to bring the installments of principal, and interest, and current as of a date specified, and the amount advanced by the mortgagee for taxes paid by the owner of the mortgage, ~~stated, 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.

SECTION 17. AMENDMENT. Section 32-19-22 of the North Dakota Century Code is amended and reenacted as follows:

32-19-22. Notice may be served by registered ~~or certified~~ mail. The notice before foreclosure may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the owner's post-office address ~~as such address is shown by~~ in the mortgage or by the records in the chain of title ~~to such real estate in the office of the recorder of the county where the real estate is situated.~~ If such post-office address is not shown in the mortgage or in such records, the notice may be served by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the owner of record at the post office nearest any part or tract of the real estate.

SECTION 18. AMENDMENT. Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

32-19-23. When notice not required. If the record title to real estate is in the name of a deceased person, ~~no~~ notice before foreclosure need not be served unless ~~an administrator or executor a personal representative of the estate of the deceased person has been~~ is appointed by the district court ~~serving 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 ~~no such administrator or executor a personal representative has not been appointed in that county may be recorded in the office of the recorder and~~ is sufficient evidence of that fact.

SECTION 19. AMENDMENT. Section 32-19-24 of the North Dakota Century Code is amended and reenacted as follows:

32-19-24. Service of notice on ~~administrator or executor~~ personal representative. If an ~~administrator or executor~~ 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 ~~administrator or executor~~ personal representative. Service may be made by registered ~~or certified~~ mail, as provided in rule 4 of the Rules of Civil Procedure, addressed to the ~~administrator's or executor's~~ personal representative's post-office address as shown by the records of the district court by which the ~~administrator or executor~~ personal representative was appointed.

SECTION 20. AMENDMENT. Section 32-19-25 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~administrator or executor estate~~ by personal service ~~thereof either~~ within or without this state, ~~made~~ in the manner provided by law for the service of a summons in a civil action.

SECTION 21. AMENDMENT. Section 32-19-26 of the North Dakota Century Code is amended and reenacted as follows:

32-19-26. Actual receipt of notice always sufficient. In any case, service of the notice before foreclosure ~~shall be~~ is sufficient if it actually was received by the title owner ~~of record~~ or by the ~~administrator or executor~~ 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 ~~of record~~ or to the ~~administrator or executor~~ personal representative of the owner's estate,

SECTION 25. AMENDMENT. Section 32-19-38 of the North Dakota Century Code is amended and reenacted as follows:

32-19-38. What the summons to contain. The summons ~~mentioned in section 32-19-29 shall~~ in a foreclosure action in which the persons unknown are named as defendants must contain, or have appended ~~thereto to the~~, 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).

SECTION 26. AMENDMENT. Section 32-19-39 of the North Dakota Century Code is amended and reenacted as follows:

32-19-39. Judgment and decrees to be binding against whom. All orders, judgments, or decrees entered in any action ~~brought under the provisions of sections 32-19-29 through 32-19-38 shall be~~ are binding upon ~~all persons~~ each person ~~proceeded against as defendants~~ a defendant, whether of age or minors, and ~~all these~~ each person claiming by, through, or under ~~them~~ a defendant after the commencement of the action, ~~and all persons~~. 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 ~~wherein said of the action is brought~~ at the time of the commencement of the action.

SECTION 27. AMENDMENT. Section 32-19-40 of the North Dakota Century Code is amended and reenacted as follows:

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, ~~ne a~~ a person holding a conveyance ~~from or under the mortgagor of the property mortgaged, or other owner thereof, nor one~~ having a lien upon ~~such 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 such the action, and the judgment ~~therein rendered and the proceedings therein had shall be as in and of the action are~~ conclusive against the party holding such unrecorded conveyance or lien as if such the party had been made a party to the action.

SECTION 28. AMENDMENT. Section 32-19-41 of the North Dakota Century Code is amended and reenacted as follows:

32-19-41. Abandoned personal property - Disposal by record title owner. The ~~record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which~~ grantee in a sheriff's deed that has been issued and 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 thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property 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. 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. This section applies only to tracts of land not exceeding forty acres [16.19 hectares].

SECTION 29. AMENDMENT. Subdivision a of subsection 1 of section 35-03-19 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Mortgage" means a mortgage or mortgage lien ~~governed by the Short term Mortgage Redemption Act as provided in chapter 32-19.4~~ covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less.

SECTION 30. REPEAL. Sections 32-19-05, 32-19-12, 32-19-13, 32-19-14, 32-19-15, 32-19-16, 32-19-17, 32-19-30, 32-19-31, 32-19-32, 32-19-33, and 32-19-34 and chapter 32-19.1 of the North Dakota Century Code are repealed.

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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2232.

Senate Vote: Yeas 43 Nays 1 Absent 3

House Vote: Yeas 81 Nays 4 Absent 9

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State