

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2232
(Senator Holmberg)

AN ACT to create and enact sections 28-21-03.1 and 28-21-04.2 of the North Dakota Century Code, relating to general and summary execution of judgment; and to amend and reenact sections 28-21-01, 28-21-03, 28-21-04, 28-21-04.1, 28-21-05, 28-21-05.1, 28-21-06, 28-21-07, 28-21-08, 28-21-09, 28-21-10, 28-21-13, 28-21-17, 28-21-18, and 28-23-11 of the North Dakota Century Code, relating to execution of judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-01 of the North Dakota Century Code is amended and reenacted as follows:

28-21-01. Execution at any time within ten years. ~~The party in whose favor a judgment has been given, and in case of creditor or the party's death, the party's duly appointed personal representatives duly appointed,~~ at any time within ten years after the entry of judgment, may proceed to enforce the same judgment by execution as provided in this chapter. ~~If the judgment creditor in a mortgage foreclosure does not proceed within sixty days after entry of judgment in the foreclosure to serve a special execution and proceed without delay to a sheriff's sale, any other lienholder or other interested person may obtain the special execution and proceed to arrange for a sheriff's sale.~~

SECTION 2. AMENDMENT. Section 28-21-03 of the North Dakota Century Code is amended and reenacted as follows:

28-21-03. Two kinds of execution. ~~There shall be are~~ two kinds of execution, one against the property of the judgment debtor, and another for the delivery of the possession of ~~real or personal property or for such delivery with~~ and any damages for withholding the same property.

SECTION 3. Section 28-21-03.1 of the North Dakota Century Code is created and enacted as follows:

28-21-03.1. General execution. If the judgment requires the payment of money or the delivery of property, the judgment may be enforced by execution.

SECTION 4. AMENDMENT. Section 28-21-04 of the North Dakota Century Code is amended and reenacted as follows:

28-21-04. Special executions. ~~When a judgment requires the payment of money or the delivery of real or personal property, the judgment may be enforced in those respects by execution as provided in this chapter. When~~ If the judgment requires the sale of property, the judgment may be enforced by a writ reciting such judgment, or the material parts of the judgment, and special execution directing the proper officer to execute the judgment by making the sale and applying application of the proceeds in conformity with the judgment. ~~When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required by the judgment or by law to obey the same, and the party's, person's, or officer's obedience thereto enforced. If the party, person, or officer refuses, the party, person, or officer may be punished by the court as for contempt.~~ Real property must be sold in the county in which it is located.

SECTION 5. AMENDMENT. Section 28-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-04.1. Summary execution on moneys retained pursuant to garnishment Self-execution judgments. ~~When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt. If the judgment requires the performance of any act, obedience to that act may be enforced by service of a certified copy of the judgment upon the party against whom it is given, or the person who is required to obey the same. Refusal may be punished by contempt.~~

SECTION 6. Section 28-21-04.2 of the North Dakota Century Code is created and enacted as follows:

28-21-04.2. Summary execution on moneys retained pursuant to garnishment. If a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by personal service or by certified mail upon the third party by a sheriff or by an attorney licensed to practice law in this state. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 within twenty days after service of the garnishment summons, an execution may not be made against moneys claimed as exempt and retained under the garnishment summons until the court determines that the moneys being garnished are not exempt.

SECTION 7. AMENDMENT. Section 28-21-05 of the North Dakota Century Code is amended and reenacted as follows:

28-21-05. Execution issued to sheriff of counties where judgment docketed. ~~When the execution is against the property An execution may be issued by the clerk of the judgment debtor, it may be issued court in which the judgment was entered to the sheriff of any county where the judgment is docketed. When it If the execution requires the delivery of real or personal property, it the execution may be issued to the sheriff of any county where the property or some part thereof portion of the property is situated. An execution must be issued from the court of the county which entered the judgment, though more More than one execution may be issued at the same time to the sheriffs of different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.~~

SECTION 8. AMENDMENT. Section 28-21-05.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-05.1. Levy with certified copy of judgment. A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment against the person, which has been docketed in any county, and proper notice has been given to the debtor requiring payment of money or

the delivery of personal property. The ~~party in whose favor the judgment was entered~~ creditor may also proceed to enforce the judgment by execution ~~as provided in this chapter.~~

SECTION 9. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is amended and reenacted as follows:

28-21-06. Issuance and contents of execution. ~~The writ of An~~ An execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff ~~as provided in section 28-21-05.~~ It. The execution must refer intelligibly to describe the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor, ~~the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known.~~ If the execution is against the property of a judgment debtor, the. A special execution must ~~also~~ state the amount of money ~~the judgment ordered the debtor to pay due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a different county other than that of the county of the issuing writ, the date and time the judgment was docketed in the that county of the sheriff to whom the execution is being issued.~~ If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and; if the same judgment orders the party against whom the judgment was rendered debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable due as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. ~~If the execution is against the property of the judgment debtor, satisfy~~ Satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the judgment debtor, and; if sufficient personal property cannot be found, out of the real property belonging to the debtor on the day date when the judgment was docketed in the county or at any time ~~thereafter~~ after that date. ~~If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or~~
2. ~~If the execution is for the delivery of the possession of real or personal property, deliver the possession of the property to the party entitled thereto, to the property and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered judgment debtor and; if sufficient personal property cannot be found, out of the real property belonging to the party of the judgment debtor on the day date when the judgment was docketed in the county or at any time thereafter after that date. If delivery of the property cannot be had delivered, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party judgment debtor as if an execution against the property of the party had been issued.~~

SECTION 10. AMENDMENT. Section 28-21-07 of the North Dakota Century Code is amended and reenacted as follows:

28-21-07. Time of return. ~~The execution is returnable~~ must be returned to the clerk ~~with whom the record of the judgment is filed~~ within sixty days after its the receipt by the officer ~~and, except when.~~ If a sheriff's levy has been made within the sixty days, the execution is returnable to the clerk must be returned within a reasonable time following the completion of the sale of the property or ninety days after its receipt by the officer. If a levy has been made and the issue of ownership of the property or interest therein in the property is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause

shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

SECTION 11. AMENDMENT. Section 28-21-08 of the North Dakota Century Code is amended and reenacted as follows:

28-21-08. Property subject to levy - Manner of levy. All goods, chattels, moneys, and other property, both real and personal, or any interest therein,

1. ~~An interest in property of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are~~ is subject to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, and any interest in real or personal property, and all other property not capable of manual delivery; may be taken on execution and sold as provided in this chapter. The levy under an execution must be made as follows:
 1. ~~Upon~~ On real property, the sheriff shall file a notice of levy with the recorder of the county in which the property is located ~~a notice of levy that~~ which has been signed by the sheriff and which states the names of the parties to the action and a description of the property.
 2. b. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.
 3. ~~c.~~ c. ~~Upon~~ On money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution ~~and levy~~ to the person who has custody of ~~such the~~ the property, except as ~~may be provided for in chapter 32-09.1~~ wage garnishment.
 4. d. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy ~~under an execution~~ with the person holding the property ~~or~~:
 - a. If the property consists of a right or share in the stock of a corporation or interest or profits ~~thereon in the corporation~~, the sheriff shall leave the copy with the president or other head of the corporation, or the secretary, cashier, any officer or managing agent thereof of the corporation.
 - b. If the property consists of membership interests in a limited liability company or interest or profits ~~thereon in a limited liability company~~, the sheriff shall leave the copy with the president or other head of the limited liability company or the secretary, treasurer, any officer or managing agent thereof of the limited liability company.
2. The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property ~~which that~~ by reason of its bulk or other cause cannot be removed immediately ~~and upon service~~. Service of the notice of levy ~~in accordance with~~ under this section and section 28-21-12, ~~the levy~~ is as valid and effectual as if the property had been seized and the possession and control ~~thereof of the property~~ retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made ~~in accordance with~~ under this section and section 28-21-12.

SECTION 12. AMENDMENT. Section 28-21-09 of the North Dakota Century Code is amended and reenacted as follows:

28-21-09. Pledged or mortgaged property may be levied on. When property is pledged or mortgaged or is subject to a lien for the payment of money or the performance of any obligation, the right and interest of the ~~execution judgment~~ debtor therein may be sold ~~on execution~~ without taking

possession of or removing the property to the place of sale, but the entire right and interest of ~~such the~~ debtor in ~~all~~ the property ~~separately~~ pledged or covered by each ~~separate mortgage or lien~~ must be sold ~~together as a distinct one parcel or thing,~~ and the purchaser ~~at such sale shall acquire~~ acquires all the right and interest of ~~such the~~ debtor ~~therein~~.

SECTION 13. AMENDMENT. Section 28-21-10 of the North Dakota Century Code is amended and reenacted as follows:

28-21-10. Officer's proceedings on execution. When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received ~~it~~ the execution and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold ~~at length~~ with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, ~~it~~ the execution must be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in ~~such~~ the case must be stated in the return.

SECTION 14. AMENDMENT. Section 28-21-13 of the North Dakota Century Code is amended and reenacted as follows:

28-21-13. Amount levied - When lien on personalty. The officer ~~in all cases~~ shall select ~~such as~~ nearly as practicable property and in ~~such~~ quantities as will be likely to bring the exact amount required to be raised ~~as nearly as practicable,~~ and ~~having made one levy, at any time thereafter~~ may make ~~other levies more than one levy~~ if the officer ~~deems it~~ determines multiple levies necessary. ~~No~~ A writ of execution is not a lien on personal property before the actual levy ~~thereof~~.

SECTION 15. AMENDMENT. Section 28-21-17 of the North Dakota Century Code is amended and reenacted as follows:

28-21-17. Execution against principal first. ~~In all cases when~~ If a judgment is rendered upon any instrument in writing in which two or more persons are severally bound, and it appears to the court ~~by parol or other testimony that one or more of said persons so bound~~ a person signed the same as surety or bail for that person's codefendant, the court ~~in entering judgment thereon~~ shall state which of the defendants is principal debtor and which is surety or bail. Execution issued on ~~such the~~ judgment must command the sheriff ~~or other officer~~ to cause the money to be made of the personal property and real property of the principal debtor, ~~but for want of sufficient property of the principal debtor to make the same to cause to be sold and if the proceeds from that sale are insufficient, to collect the same to be made of~~ deficiency from the personal and real property of the surety or bail. ~~In all cases the~~ The property, ~~both personal and real,~~ of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail may be taken in execution.

SECTION 16. AMENDMENT. Section 28-21-18 of the North Dakota Century Code is amended and reenacted as follows:

28-21-18. Return of writ by mail. When execution is issued in any county and directed and delivered to the sheriff ~~or coroner~~ of another county, the sheriff ~~or coroner having the execution~~ after ~~having discharged~~ discharging all the duties required by law shall mail the execution to the clerk who issued the execution. On proof by the sheriff ~~or coroner~~ that the execution was mailed soon enough to have reached the clerk ~~prior to~~ before the execution's expiration, the sheriff ~~or coroner~~ is not liable for any penalty if the execution does not reach the office in due time.

SECTION 17. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

28-23-11. Purchaser's right - Sheriff's certificate.

1. ~~Upon a sale of real property, the~~ The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the

debtor to the property. If the estate is a leasehold less than a ~~leasehold~~ of two years' unexpired term, the sale is absolute. ~~In all other cases~~ Otherwise, the real property is subject to redemption ~~as provided in~~ under this title. The officer shall give to the purchaser a certificate of sale containing a:

- a. A particular description of the real property sold; a
 - b. A statement of the price bid for each distinct lot or parcel; a
 - c. A statement of the whole price paid; ~~the period of~~
 - d. If subject to redemption, a statement to that effect; and ~~the~~
 - e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.
2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

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

Senate Vote: Yeas 43 Nays 0 Absent 4

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State