

PROPERTY

CHAPTER 390

SENATE BILL NO. 2235

(Senators Holmberg, Hogue)

AN ACT to create and enact a new section to chapter 47-04.1 of the North Dakota Century Code, relating to lender approval of amendment of condominium rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-04.1 of the North Dakota Century Code is created and enacted as follows:

Approval by lender of amendment. Notwithstanding any requirement in the condominium declaration or bylaws requiring a lender's approval of any amendment of the declaration or bylaws, after being given a thirty-day written notice beginning with the date of mailing, any lender contacted at the last-known address that does not refuse or approve of the proposed amendment is deemed to have approved the amendment. This section does not apply to any proposed amendment that affects a lender's right to enforce the terms of the mortgage.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 391**HOUSE BILL NO. 1045**

(Legislative Council)
(Natural Resources Committee)

AN ACT to amend and reenact section 47-05-01, subsection 1 of section 47-05-02, and section 47-05-17 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-05-01 of the North Dakota Century Code is amended and reenacted as follows:

47-05-01. Easements attached to other lands. The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. ~~The right of taking game.~~
4. The right of way.
- ~~5.~~ 4. The right of taking water, wood, minerals, and other things.
- ~~6.~~ 5. The right of transacting business upon land.
- ~~7.~~ 6. The right of conducting lawful sports upon land.
- ~~8.~~ 7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
- ~~9.~~ 8. The right of receiving water from or discharging the same upon land.
- ~~10.~~ 9. The right of flooding land.
- ~~11.~~ 10. The right of having water flow without diminution or disturbance of any kind.
- ~~12.~~ 11. The right of using a wall as a party wall.
- ~~13.~~ 12. The right of receiving more than natural support from adjacent land or things affixed thereto.
- ~~14.~~ 13. The right of having the whole of a division fence maintained by a coterminous owner.
- ~~15.~~ 14. The right of having public conveyances stopped or of stopping the same on land.

- ~~46.~~ 15. The right of a seat in church.
- ~~47.~~ 16. The right of burial.

SECTION 2. AMENDMENT. Subsection 1 of section 47-05-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The right to pasture, and of fishing ~~and taking game~~.

SECTION 3. AMENDMENT. Section 47-05-17 of the North Dakota Century Code is amended and reenacted as follows:

47-05-17. (~~Effective through July 31, 2009~~) Severance of the right of access for hunting access prohibited. The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before August 1, 2007.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 392**SENATE BILL NO. 2236**
(Senators Holmberg, Hogue)

AN ACT to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to the power of a trustee to transfer property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-10 of the North Dakota Century Code is created and enacted as follows:

Authority of trustee. The trustee of a trust that holds title to real property is presumed to have the power to sell, convey, and encumber the real property unless restrictions on that power appear in the records of the county recorder.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 393**HOUSE BILL NO. 1156**

(Judiciary Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact subsection 2 of section 47-16-07.1 and section 47-30.1-08 of the North Dakota Century Code, relating to reporting security deposits under the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-16-07.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
 - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or the lessee's guest.
 - b. Any unpaid rent.
 - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of any portion of a security deposit not paid to the lessee upon termination of the lease must be itemized by the lessor. Such itemization together with the amount due must be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice must contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration. Any amounts not claimed from the lessor by the lessee within one year of the termination of the lease agreement are subject to the reporting requirements of section 47-30.1-08.

SECTION 2. AMENDMENT. Section 47-30.1-08 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-08. Deposits held by utilities Security deposits. A deposit, including any interest thereon, made in advance by a ~~subscriber with a utility person~~ to secure ~~payment or any sum paid in advance for utility services to be furnished an~~ agreement for rights or services, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services agreement for which the deposit or advance payment was made, is presumed abandoned.

Approved April 16, 2009
Filed April 17, 2009

CHAPTER 394

SENATE BILL NO. 2171

(Senators J. Lee, Fischer, Lyson)
(Representatives Delmore, Grande, Gruchalla)

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to the termination of a residential lease by a victim of domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Termination due to domestic abuse.

1. A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.
2. The tenant must provide advance written notice to the landlord stating that the tenant fears imminent domestic violence from a person named in a protection order after a hearing under section 14-07.1-02 or an order prohibiting contact, the tenant needs to terminate the tenancy, and the specific date the tenancy will terminate. The notice must be delivered by mail, facsimile communication, or in person before the termination of the tenancy, and be accompanied by the protection order or the order prohibiting contact.
3. A landlord may not disclose information provided to the landlord by a tenant documenting domestic violence under this section. The information may not be entered into any shared data base or provided to any person, but may be used as evidence in an eviction proceeding, in a claim for unpaid rent or damages arising out of the tenancy, or as otherwise required by law.
4. A tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate. The tenant is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section.
5. This section does not affect a tenant's liability for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated by the tenant under this section.
6. The tenancy terminates, including the right of possession of the premises, on the termination date stated in the notice under subsection 2. The amount equal to one month's rent must be paid on or before the

termination of the tenancy for the tenant to be relieved of the contractual obligations for the remaining term of the lease as provided in this section.

7. For purposes of this section, timing for the payment of the lessee's security deposit under section 47-16-07.1 is triggered by either of the following:
 - a. If the only tenant, including the tenant's minor children, is the tenant who is the victim of domestic violence, upon the first day of the month following the date the tenant vacates the premises.
 - b. If there are additional tenants bound by the lease, upon the expiration of the lease.
8. Notwithstanding the release of a tenant from a lease agreement under this section, the tenancy continues for any remaining tenants.
9. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

Approved April 24, 2009

Filed April 29, 2009

CHAPTER 395**SENATE BILL NO. 2176**

(Senators J. Lee, Fischer, Flakoll)
(Representatives Hawken, Keiser, Potter)

AN ACT to amend and reenact section 47-16-18 of the North Dakota Century Code, relating to the termination of a lease by death.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-18 of the North Dakota Century Code is amended and reenacted as follows:

47-16-18. When lease of real property is terminated by death. ~~Only when~~ ~~the~~ ~~a~~ lease of real property ~~which~~ is terminable at the pleasure of one of the parties to the contract is ~~it~~ terminated by the notice to one party of the death or incapacity of the other party to contract. Upon the death of a lessee of real property for residential purposes, however, and at the option of any surviving lessee or of the estate of the decedent, the lease terminates on the last day of the month in the month following the death of the lessee unless the lease term expires before that time.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 396**SENATE BILL NO. 2234**
(Senators Holmberg, Hogue)

AN ACT to amend and reenact section 47-19-02 of the North Dakota Century Code, relating to recording instruments without acknowledgement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-02 of the North Dakota Century Code is amended and reenacted as follows:

47-19-02. Instruments entitled to record without acknowledgment. The following instruments may be recorded without acknowledgment or further proof:

1. Any judgment affecting the title to or the possession of real property authenticated by the certificate of the clerk of the court in which such judgment is rendered.
2. Any letters patent from the United States.
3. Any duplicate final register's receipt.
4. A certificate from the United States land office.
5. A contract between the state and a purchaser of school and institutional lands for the purchase and sale of such lands.
6. An assignment of any such contract when such assignment has been approved by the board of university and school lands.
7. Any certified copy of a patent or of a duplicate final register's receipt or certificate when certified and proved according to the laws of the United States and of this state in such manner as to entitle it to admission as evidence in the courts of this state, and when so recorded, it shall be notice in like manner and to the same extent as the originals thereof would have been if the same had been recorded.
8. Any affidavit made as is provided in section 47-19-12.
9. A certified copy of an order of a district court relating to estate tax determinations.
10. A statement of the state tax commissioner relating to estate tax determination.
11. A certified copy of discharge of bankrupt.
12. A financing statement as defined in section 41-09-02.

13. All instruments issued by the United States, or any agency, bureau, or department thereof and the state of North Dakota and all political subdivisions thereof which affect the title to real property.
 1. An instrument issued by an agency, bureau, department, or the judiciary of the United States, this state or a political subdivision of this state, or an Indian tribe recognized by the United States department of the interior. An instrument includes a contract or agreement that is entered by one of these governmental entities that contract or agreement is deemed to have been issued by the entity.
 2. An instrument certified by an agency, bureau, department, or the judiciary of the United States or a foreign government, a state of the United States or a political subdivision of a state, or an Indian tribe recognized by the United States department of the interior.
 3. A lis pendens or other instrument that is signed by an attorney at law licensed to practice law in this state which bears the attorney's identification number issued by the state board of law examiners.
 4. An affidavit that bears a jurat or verification upon oath or affirmation.
 5. A Uniform Commercial Code financing statement under title 41.
 6. A plat signed by a land surveyor registered in this state.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 397**SENATE BILL NO. 2233**
(Senator Holmberg)

AN ACT to create and enact two new sections to chapter 47-19 of the North Dakota Century Code, relating to recording of change of name or identity of mortgagee and the assignment, satisfaction, release, or authorization of foreclosure by a mortgagee; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 47-19 of the North Dakota Century Code are created and enacted as follows:

Corporate change noted in assignment, satisfaction, or release. When a change in the name or identity of a corporate mortgagee or assignee of the mortgagee is caused by or results from a merger, consolidation, amendment to charter or articles of incorporation, or conversion of articles of incorporation or charter from federal to state, from state to federal, or from one form of entity to another, a mortgage assignment, satisfaction, or release that is otherwise recordable and that specifies in the body of the instrument the merger, consolidation, amendment, or conversion event causing the change in name or identity is in recordable form. The assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder without further evidence of corporate merger, consolidation, amendment, or conversion. For purposes of assigning, satisfying, or releasing the mortgage, the assignment, satisfaction, or release is prima facie evidence of the facts stated in it with respect to the corporate merger, consolidation, amendment, or conversion, and the county recorder shall rely upon it to assign, satisfy, or release the mortgage.

Authority of mortgagee designated as nominee or agent - Retroactive application.

1. An assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder and is sufficient to assign, satisfy, or release a mortgage if:
 - a. A mortgage is granted to a mortgagee as nominee or agent for a third party identified in the mortgage, and the third party's successors and assigns;
 - b. A subsequent assignment, satisfaction, or release of the mortgage is executed by the mortgagee or the third party, its successors or assigns; and
 - c. The assignment, satisfaction, or release is in recordable form.
2. The county recorder shall rely upon the recorded assignment, satisfaction, or release in subsection 1 to assign, satisfy, or release the mortgage.

3. This section applies to any mortgage assignment, satisfaction, or release executed, recorded, or filed before, on, or after August 1, 2009.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 398**HOUSE BILL NO. 1232**
(Representatives N. Johnson, Vigesaa)
(Senators Lyson, Nething)

AN ACT to amend and reenact section 47-24.1-10 of the North Dakota Century Code, relating to custodianships for property of minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-24.1-10 of the North Dakota Century Code is amended and reenacted as follows:

47-24.1-10. Single custodianship. A transfer may be made only for one minor and ~~only one person~~ up to two persons may be ~~the custodian~~ joint custodians. All custodial property held under this chapter by the same custodian or joint custodians for the benefit of the same minor constitutes a single custodianship. Unless otherwise specified in a document creating the custodial property, each joint custodian may act alone with respect to the custodial property. If either joint custodian resigns, dies, becomes incapacitated, or is removed, then the remaining joint custodian becomes sole custodian.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 399**SENATE BILL NO. 2282**

(Senators Olafson, J. Lee)
(Representative Dahl)

AN ACT to create and enact a new section to chapter 47-25 of the North Dakota Century Code, relating to use of trade names by franchisees; and to amend and reenact sections 47-25-06.1 and 47-25-07 of the North Dakota Century Code, relating to amendments and cancellation of trade name registrations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-25 of the North Dakota Century Code is created and enacted as follows:

Certain use of trade names by franchisees restricted.

1. Except as provided in section 47-25-03, an individual or organization that is a franchisee may not register a licensed trade name under this chapter. If the licensed trade name is not registered as provided in this chapter, the franchisee may not use the trade name in this state until the franchisee has provided the following disclosure information to the secretary of state on a form prescribed by the secretary of state for that purpose:
 - a. The true and full name and business address of the franchisee;
 - b. The complete trade name licensed to the franchisee;
 - c. The address of each place of business in this state where the franchisee will use or display the unregistered trade name;
 - d. The name and address of the franchiser or other licensor of the trade name; and
 - e. Any other information that the secretary of state may reasonably request to identify or contact the franchisee.

The disclosure filing required under this subsection is subject to the same filing fee and renewal requirements as provided in section 47-25-04 for trade name registrations.

2. A trade name licensed to a franchisee that is not registered under the provisions of this chapter is not entitled to any trade name protection provided by this chapter.

SECTION 2. AMENDMENT. Section 47-25-06.1 of the North Dakota Century Code is amended and reenacted as follows:

47-25-06.1. Change of name or address of registrant - Other amendments. Any registrant that effects a name change must record that name

change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of twenty-five dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual;
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota; or
3. An amendment or application for amended certificate of authority for a registrant that is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

A registrant may submit an amendment to a trade name registration on a form prescribed by the secretary of state to show any change in the nature of the business or in the purpose of the registration. The secretary of state shall amend the registration upon receipt of the completed form and payment of a fee of twenty-five dollars by the registrant.

SECTION 3. AMENDMENT. Section 47-25-07 of the North Dakota Century Code is amended and reenacted as follows:

47-25-07. Cancellation. The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state receives a voluntary written and signed request for cancellation from the registrant or the assignee of record. In the case of a registrant who is a deceased individual, the request for cancellation may be made by the personal representative of the registrant's estate.
2. Any registration concerning which a state district court finds any of the following:
 - a. That the registered trade name has been abandoned.
 - b. That the registrant is not the owner of the trade name.
 - c. That the registration was granted improperly.
 - d. That the registration was obtained fraudulently.

- e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.
3. Any registration a district court orders canceled on any grounds.
4. Any trade name when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 400**HOUSE BILL NO. 1137**

(Education Committee)

(At the request of the Board of University and School Lands)

AN ACT to amend and reenact section 47-30.1-35 of the North Dakota Century Code, relating to locater agreement requirements under the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-30.1-35 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-35. Agreement Agreements to locate reported and unreported property.

1. All agreements to pay compensation to recover or assist in the recovery of property reported under section 47-30.1-17, made within twenty-four months after the date payment or delivery is made to the administrator, are unenforceable.
2. An agreement entered into after such twenty-four-month period is enforceable only if the agreement is in writing and the aggregate fee, compensation, or commission charged is not in excess of ten percent of the amount recovered.
3. An agreement entered into on or after August 1, 2009, with an owner under which the owner is to pay a fee for locating, delivering, recovering, or assisting in the recovery of property that has not yet been reported to the unclaimed property office under chapter 47-30.1 is enforceable only if the agreement:
 - a. Is in writing;
 - b. Sets forth the nature of the property for which recovery is sought;
 - c. Describes the services to be rendered in connection with locating, delivering, recovering, or assisting in the recovery of the property;
 - d. States the value of the property;
 - e. Sets forth or describes the amount of the fee;
 - f. Is signed by the apparent owner;
 - g. Discloses that, absent the agreement, the property would otherwise be delivered to a state-administered unclaimed property program for safekeeping on the owner's behalf and that upon such delivery, the owner may be able to recover the property from the state-administered program without charge; and

- h. Provides the apparent owner with contact information for the state-administered unclaimed property program to which the property would otherwise be reported.
- 4. Nothing in this section may be construed to prevent an owner from asserting at any time that an agreement to locate, deliver, recover, or assist in the recovery of property is based upon excessive or unjust consideration.

Approved March 19, 2009

Filed March 24, 2009

CHAPTER 401**SENATE BILL NO. 2139**

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to ownership of subsurface pore space; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 47 of the North Dakota Century Code is created and enacted as follows:

Policy. Undivided estates in land and clarity in land titles reduce litigation, enhance comprehensive management, and promote the security and stability useful for economic development, environmental protection, and government operations.

Pore space defined. In this chapter "pore space" means a cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.

Title to pore space. Title to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.

Conveyance of real property conveys pore space. A conveyance of title to the surface of real property conveys the pore space in all strata underlying the surface of the real property.

Severing pore space prohibited. Title to pore space may not be severed from title to the surface of the real property overlying the pore space. An instrument or arrangement that seeks to sever title to pore space from title to the surface is void as to the severance of the pore space from the surface interest.

Transactions allowed. Leasing pore space is not a severance prohibited by this chapter.

Application. This chapter does not affect transactions before the effective date of this chapter that severed pore space from title to the surface estate.

Mineral and pore space estates - Relationship. In the relationship between a severed mineral owner and a pore space estate, this chapter does not change or alter the common law as of the effective date of this chapter as it relates to the rights belonging to, or the dominance of, the mineral estate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2009
Filed April 9, 2009