

PROPERTY

CHAPTER 404

HOUSE BILL NO. 1188

(Representatives Louser, Boschee, Cory, Koppelman, Meier, Mock, Steiner,
VanWinkle)
(Senators Larsen, Larson)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to the prohibition of unfair service agreements.

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:

Definitions.

As used in this chapter:

1. "Recording" means the act of presenting a patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, or other instrument required to be filed or admitted to record, to the county recorder of the county in which the property is situated, for the purposes of placing the document in the proper books or other storage media as described in section 11-18-01.
2. "Residential real estate" means real property located in this state which is used primarily for personal, family, or household purposes and which is improved by one to four dwelling units.
3. "Service agreement" means a contract under which a person agrees to provide services in connection with the maintenance, purchase, or sale of residential real estate.
4. "Service provider" means a person that enters a service agreement with a person that has an interest in residential real estate.

Unfair service agreements - Prohibition.

1. A service agreement is deemed unfair under this chapter if the service obligations of the agreement are not to be performed within one year after the agreement is executed and the agreement:
 - a. Purports to be a covenant running with the land as described in section 47-04-25;
 - b. Purports to be binding on future owners of interests in the real property;

- c. Allows for assignment of the right to provide service without notice and agreement of the owner of residential real estate; or
 - d. Purports to create a lien, encumbrance, or other real property security interest.
2. This chapter does not:
- a. Apply to a home warranty or other type of similar product that covers the cost of maintenance of a major housing system for a set period of time from the date a house is sold;
 - b. Apply to an insurance contract;
 - c. Apply to an option to purchase or right of refusal;
 - d. Apply to a maintenance or repair agreement executed between a landowner and a homeowners' association in a common interest community; and
 - e. Impair the rights and remedies provided in chapter 35-27.

Actions to terminate service agreements for unfairness - Unfair agreements void and unenforceable - Recording of court order.

1. A person claiming to be subject to an unfair service agreement under this chapter may bring an action to terminate the agreement in the district court of the county in which the property is situated.
2. If a service agreement is found to be unfair under this chapter:
 - a. The agreement is void; and
 - b. A certified copy of the court order finding the service agreement void must be filed for recording along with a copy or memorandum of the original service agreement if the original service agreement is not of record.

Actual damages - Costs and attorney's fees.

The district court shall award the actual damages arising from the unfair service agreement, actual attorney's fees proven against the service provider, and costs incurred by the challenging party if the party with an interest in residential real estate subject to a service agreement has been found to be unfair by a district court.

Approved March 23, 2023

Filed March 23, 2023

CHAPTER 405

HOUSE BILL NO. 1310

(Representatives Boschee, Cory, Dakane, Louser, Mock, Novak, Roers Jones)
(Senators Braunberger, Larson)

AN ACT to create and enact a new section to chapter 47-04.1 of the North Dakota Century Code, relating to electric vehicle charging station installation in condominiums; and to provide a penalty.

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:

Electric vehicle charging station installation - Penalty.

1. For purposes of this section:
 - a. "Reasonable restrictions" means restrictions on the number, size, location, and manner of placement or installation of an electric vehicle charging station on the common or limited common area which do not significantly increase the cost of the electric vehicle charging station or significantly decrease the efficiency or specified performance of the electric vehicle charging station.
 - b. "Electric vehicle charging station" means a station that delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.
2. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in the property, or any bylaw, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station within an owner's unit or in a designated parking space, including a deeded parking space, a parking space in an owner's limited common area, or a parking space specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable. This section does not apply to a bylaw that imposes reasonable restrictions on electric vehicle charging stations.
3. An electric vehicle charging station must meet all applicable health and safety standards and requirements imposed by law, rule, or regulation. If approval is required for the installation or use of an electric vehicle charging station, the application for approval must be processed and approved by the administrative body governing the condominium in a manner prescribed by the administrative body governing the condominium and may not be willfully avoided or delayed. The approval or denial of an application must be in writing. If an application is not denied in writing within sixty days from the date

of receipt of the application, the application is deemed approved, unless that delay is the result of a reasonable request for additional information.

4. If the electric vehicle charging station is to be placed in a limited common area, as provided in the required declaration contained in section 47-04.1-02:
 - a. The owner shall obtain approval from the administrative body governing the condominium to install the electric vehicle charging station. The administrative body governing the condominium shall approve the installation in a limited common area if the owner agrees in writing to:
 - (1) Comply with the architectural standards of the administrative body governing the condominium for the installation of the charging station;
 - (2) Engage a licensed contractor to install the charging station;
 - (3) Within fourteen days of approval, provide a certificate of insurance that names the administrative body governing the condominium as an additional insured under the owner's insurance policy pursuant to subdivision c;
 - (4) Pay the costs associated with the installation of and the electricity usage associated with the charging station; and
 - (5) Comply with any other reasonable regulations, including regulations on the number, size, location, and manner of placement or installation of electric vehicle charging stations on the limited common area, as required by the administrative body governing the condominium.
 - b. The owner and each successive owner of the charging station is responsible for:
 - (1) Costs relating to damage to the charging station, common area, limited common area, or any unit resulting from the installation, maintenance, repair, removal, or replacement of the charging station;
 - (2) Costs relating to the maintenance, repair, and replacement of the charging station until it is removed and for the restoration of the common area after removal;
 - (3) The cost of electricity associated with the charging station;
 - (4) Other costs not listed in this subsection which may arise; and
 - (5) Disclosing to prospective buyers the existence of any charging station and the related responsibilities of the owner under this section.
 - c. The owner of the charging station shall, at all times, maintain a liability coverage policy not to exceed the value of a typical condominium owner's policy. Within fourteen days of approval of the application, the owner that submitted the application to install the charging station shall provide the administrative body governing the condominium with the corresponding certificate of insurance. The owner and each successive owner shall provide the administrative body governing the condominium with the certificate of insurance each year.

- d. A homeowner may not be required to maintain a homeowners liability coverage policy for an existing national electrical manufacturers association standard alternating current power plug.
 - e. This section does not prohibit the administrative body governing a condominium from imposing reasonable regulations on the number, size, and manner of placement of an electric vehicle charging station in common areas or limited common areas.
 - f. The administrative body governing the condominium may deny the installation of an electric vehicle charging station based on bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.
5. Except as provided in subsection 6, if installation of an electric vehicle charging station in the owner's designated parking space is impossible or unreasonably expensive, the administrative body governing the condominium may authorize the installation of an electric vehicle charging station for the exclusive use of an owner in a common area that is not a limited common area. The administrative body governing the condominium may deny the installation of an electric vehicle charging station if a reasonable area is not available or the area cannot be reasonably accessed by the owner. If installation is authorized under this subsection, the administrative body governing the condominium shall enter a license agreement with the owner for the use of the space in a common area and the owner shall comply with all the requirements in subsection 4.
 6. The administrative body governing the condominium or owners may install an electric vehicle charging station in a common area for the use of all members of the condominium and develop appropriate terms of use for the charging station.
 7. An administrative body governing the condominium may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.
 8. An administrative body governing a condominium which willfully violates this section is liable for actual damages and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars.
 9. Any unit owner installing an electric vehicle charging station shall indemnify and hold the administrative body governing the condominium harmless from all liability, including reasonable attorney's fees incurred by the administrative body governing the condominium resulting from a claim arising out of the installation, maintenance, operation, or use of the electric vehicle charging station.

Approved April 27, 2023

Filed April 28, 2023

CHAPTER 406

HOUSE BILL NO. 1135

(Representatives Klemin, Beltz, Motschenbacher, Thomas)
(Senators Dwyer, Luick, Myrdal)

AN ACT to amend and reenact sections 47-10.1-01 and 47-10.1-02 of the North Dakota Century Code, relating to exceptions to the acquisition of agricultural land by foreign governments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

47-10.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural land" means land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than, and nonconforming with, agricultural use, but does not include any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals.
2. "Controlling interest" means:
 - a. Possession of fifty-one percent or more of the ownership interests in an entity; or
 - b. A percentage ownership interest in an entity of less than fifty-one percent, if the foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.
3. "Foreign government" means a government or the state-controlled enterprise of a foreign government. The term does not include the government of the United States or its states, territories, or possessions or the government of Canada or its provinces or territories.
4. "Foreign governmental interest in agricultural land" includes the purchase, acquisition, or possession of any absolute or qualified ownership of land by a foreign government, except does not include a leasehold interest.
5. "Interest in agricultural land" includes any leasehold interest.
6. "State-controlled enterprise" means a business enterprise, however denominated, in which a foreign government has a controlling interest.

SECTION 2. AMENDMENT. Section 47-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

47-10.1-02. Restriction on acquisition - Exceptions.

1. An individual who is not a citizen of the United States, a citizen of Canada, or a permanent resident alien of the United States may not acquire directly or indirectly any interest in agricultural land unless:
 - a. The individual is an alien entitled to enter the United States under the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the individual is a national, solely to develop and direct the operations of an enterprise in which the individual has invested or to direct the operations of an enterprise in which the individual is actively in the process of investing a substantial amount of capital;
 - b. The individual resides in this state for at least ten months out of every year;
 - c. The individual actively participates in the operation of the agricultural land;
 - d. The agricultural landholding does not exceed six hundred forty acres [258.99 hectares]; and
 - e. The agricultural landholding includes a dairy operation.
2. An individual who is permitted to acquire an interest in agricultural land under subsection 1 shall:
 - a. Notify the agriculture commissioner of any land acquisition within thirty days of the acquisition; and
 - b. Annually provide the agriculture commissioner with a list of all addresses at which the individual resided during the previous year and the dates during which the individual resided at each address.
3. If an individual ceases to meet the exceptions provided for in subsection 1, the individual shall dispose of the agricultural land within twenty-four months.
4. A partnership, limited partnership, limited liability company, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States.
5. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim must be disposed of within three years after acquiring ownership if the acquisition would otherwise violate this section.

6. This section does not apply to a foreign corporation or a foreign limited liability company which acquires agricultural land for use as an industrial site when construction contracts are entered into by the corporation or limited liability company within one hundred fifty days after acquisition of the land; provided, that this exception applies only to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation or a foreign limited liability company which owns agricultural land for industrial purposes but which discontinues using the land for industrial purposes shall dispose of the land as provided by chapter 10-06.1. A foreign corporation or foreign limited liability company shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land.
7. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.
8. Notwithstanding subsection 4 and subsection 6, after June 30, 2023, a foreign government may not purchase, acquire, or hold any foreign governmental interest in agricultural land in the state. This section does not apply to any interest in agricultural land held by a foreign government before July 1, 2023.
9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the acquisition of agricultural land or an interest in agricultural land by a state-controlled enterprise if the agricultural land:
 - a. Is used for agricultural research and development, or experimental purposes, including testing, developing, or producing crop production inputs, including seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and
 - b. Does not exceed one hundred sixty acres [64.75 hectares].

Approved April 20, 2023

Filed April 21, 2023

CHAPTER 407

SENATE BILL NO. 2263

(Senators Meyer, Lee)
(Representative Louser)

AN ACT to amend and reenact sections 47-10.2-01, 47-10.2-02, 47-10.2-03, and 47-10.2-05 of the North Dakota Century Code, relating to escrow accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

47-10.2-01. Definitions.

In sections 47-10.2-01 through 47-10.2-03, unless the context or subject matter otherwise requires:

1. "Borrower" means the obligor under a residential mortgage held by a secondary mortgagee.
2. "~~Excess amount~~Servicer" means ~~any amount received in an escrow account during a calendar year in excess of three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ a person or entity maintaining an escrow account for a residential mortgage.
3. "~~Secondary mortgagee~~" means ~~a successor mortgagee not residing or domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments, and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home.~~
4. "~~Servicer~~Surplus amount" means ~~a person or entity maintaining an escrow account for a secondary residential mortgagee~~ from the annual escrow account analysis, any amount greater than or equal to fifty dollars, excluding any escrow cushion required by the servicer.

SECTION 2. AMENDMENT. Section 47-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

47-10.2-02. Notice of ~~excess~~surplus escrow payments.

If an escrow account is maintained by the servicer of a ~~secondary~~ residential mortgage for a ~~secondary~~ mortgagee, and the account contains an ~~excess~~ surplus amount, the servicer shall provide written notice to the borrower, ~~on or before March first of the following year, of the escrow account status within thirty calendar days following the end of the escrow account computation year.~~ The information provided

to the borrower must include the balance in the escrow account after the annual payment of taxes and special assessments.

SECTION 3. AMENDMENT. Section 47-10.2-03 of the North Dakota Century Code is amended and reenacted as follows:

47-10.2-03. Application ~~Refunding~~ of excess ~~surplus~~ escrow payments.

Upon receipt ~~creation~~ of the written notice under section 47-10.2-02, ~~the borrower may, within thirty days after the date of the notice, elect in a written request to the servicer one of the following options:~~

1. Refund of all or part of the excess amount; or
2. Retention of all or part of the excess amount in the escrow account.

~~If the borrower does not advise the servicer in writing within the time provided in this section, the servicer may continue maintenance of the escrow account in the same manner until the next report to the borrower under sections 47-10.2-01 through 47-10.2-03. If the borrower advises the servicer of an election within the time prescribed in sections 47-10.2-01 through 47-10.2-03, the servicer must comply with the borrower's election within thirty days of the election the servicer shall refund any surplus amount to the borrower within thirty calendar days following the end of the escrow account computation year. The notice required under section 47-10.2-02 must be included when surplus escrow funds are refunded under this section.~~

SECTION 4. AMENDMENT. Section 47-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

47-10.2-05. Annual escrow account statement.

Each residential mortgagee, including any insurance company with articles of incorporation filed under section 26.1-01-03 ~~or which is required to obtain a certificate of authority under section 26.1-01-05~~, intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall furnish annually each mortgagor with a detailed statement showing all debits and credits to the account.

Approved April 12, 2023

Filed April 13, 2023

CHAPTER 408

HOUSE BILL NO. 1360

(Representative Klemin)
(Senator Larson)

AN ACT to amend and reenact sections 47-30.2-24 and 47-30.2-39 of the North Dakota Century Code, relating to the revised uniform unclaimed property act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-30.2-24 of the North Dakota Century Code is amended and reenacted as follows:

47-30.2-24. (404) Retention of records by holder.

1. A holder required to file a report under section 47-30.2-21 shall retain records for ten years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the commissioner.
2. Upon receipt of a notice for an examination under section 47-30.2-55, a holder shall retain, until the conclusion of the examination or any related appeal or litigation, all relevant records dating back ten years from the commencement of the examination, plus the applicable dormancy period under section 47-30.2-04, before the date of the administrator's delivery of a notice of an examination to a holder under this chapter.
3. The holder may satisfy the requirement to retain records under this section through an agent.
4. The records must contain:
 - 1-a. The verifiable information required to be included in the report;
 - 2-b. The date, place, and nature of the circumstances that gave rise to the property right;
 - 3-c. The amount or value of the property;
 - 4-d. The last address of the apparent owner, if known to the holder;
 - 5-e. If the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue; and
 - f. Records of items that were not reported as unclaimed sufficient to determine whether the holder has complied with this chapter.

SECTION 2. AMENDMENT. Section 47-30.2-39 of the North Dakota Century Code is amended and reenacted as follows:

47-30.2-39. (610) Periods of limitation and repose.

1. Expiration before, on, or after ~~the effective date of this chapter~~ July 1, 2021, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this chapter to file a report or pay or deliver property to the administrator.
2. The administrator may not commence an action or proceeding to enforce this chapter with respect to the reporting, payment, or delivery of property more than ~~five~~seven years after the holder filed a nonfraudulent report under section 47-30.2-21 with the administrator. The parties may agree in a record to extend the limitation in this subsection.
3. The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this chapter more than ten years after the duty arose.
4. The periods of limitation established by this section are tolled by the administrator's delivery of a notice that a holder is subject to an examination under section 47-30.2-55.

Approved April 7, 2023

Filed April 10, 2023