

PROPERTY

CHAPTER 310

S. B. No. 330
(Chesrown, Longmire)

TERMINATION OF EASEMENTS

AN ACT

Relating to the termination of certain easements.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Temporary Easements to Contain Fixed Termination Date.) Whenever a temporary easement is acquired by the state or any of its agencies, departments, or institutions, or any political subdivision of the state in connection with highway or road construction or for any other purpose, a fixed date of termination shall be stated in such temporary easement, which date shall not be more than five years from the date of the easement.

Approved March 15, 1965.

CHAPTER 311

S. B. No. 65
(Longmire)

CONDOMINIUM OWNERSHIP OF REAL PROPERTY

AN ACT

To provide for condominium ownership of real property.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) In this chapter, unless context otherwise requires:

1. "Condominium" is an estate in real property consisting of an undivided interest or interests in common in a portion of a parcel of real property together with a separate interest or interests in space in a structure, on such real property;

2. "Project" means the entire parcel of real property divided, or to be divided into condominiums, including all structures thereon;
3. "Unit" means the elements of a condominium which are not owned in common with the owners of other condominiums in the project;
4. "Common areas" means the entire project excepting all units therein granted or reserved;
5. "Limited common areas" means those elements designed for use by the owners of one or more but less than all of the units included in the project;
6. "To divide" real property means to divide the ownership thereof by conveying one or more condominiums therein but less than the whole thereof;
7. "Interest" means the fractional or percentage interest or interests ascribed to each unit by the declaration provided for in section 3.

§ 2. Recording of Declaration to Submit Property to a Project.) When the sole owner or all the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property to a project established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the register of deeds of the county in which such property lies.

§ 3. Contents of Declaration.) The declaration provided for in section 2 shall contain:

1. A description or survey map of the surface of the land included within the project;
2. Diagrammatic floor plans of the structures built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions;
3. A description of the common elements;
4. A description of the limited common elements;
5. The fractional or percentage interest which each unit bears to the entire project. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

§ 4. Declaration of Restrictions.) The owner of a project, shall, prior to the conveyance of any condominium therein, record a declaration of restrictions relating to such project,

which restrictions shall be enforceable equitable servitudes where reasonable, and shall inure to and bind all owners of condominiums in the project. Such servitudes, unless otherwise provided, may be enforced by any legal or equitable owner of a condominium in the project.

§ 5. Reference to Declaration for Description of Unit and Common Elements.) All subsequent deeds, mortgages, or other instruments shall describe the unit and the land, but may describe the individual units, the common elements, other than the land, or limited common elements by reference to appropriate numbers or letters if such appear on the declaration provided for in section 3 without repeating in detail the description of such units, common elements other than the land, or limited common elements. Such reference shall include the book and page of the recorded declaration.

§ 6. Incidents of a Condominium Grant.) Unless otherwise expressly provided for in the deeds, declaration of restrictions or plan, the incidents of a condominium grant are as follows:

1. The boundaries of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the units include both the portions of the building so described and the airspace so encompassed. The following except as provided above are not part of the unit: bearing walls, columns, floors, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. In interpreting deeds and plans the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.
2. The common areas are owned by the owners of the units as tenants in common in proportion to each unit's interest.
3. A nonexclusive easement for ingress, egress, and support through the common areas is appurtenant to and

inseparable from each unit and the common areas are subject to such easements.

4. Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding his own unit.
5. Except as provided in section 9 of this chapter, the common areas shall remain undivided, and there shall be no judicial partition thereof.

§ 7. Administration — Bylaws — Rules and Regulations.)

The unit owners of each project shall provide for the administration of each project. The unit owners or administrative body established by the unit owners shall provide by bylaws for the maintenance of common elements, limited common elements where applicable, assessment of expenses, payment of losses, division of profits, disposition of hazard insurance proceeds and similar matters. A true copy of such bylaws shall be annexed to the declaration set forth in section 2 of this Act when adopted and made a part thereof and filed in the office of the register of deeds. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded in the office of the register of deeds.

All bylaws, rules and regulations as adopted by the unit owners or administrative body of the project shall be reduced to writing and available to every owner of any interest in the project.

The unit owners shall also cause to be recorded in the office of the register of deeds the name of the person or persons who are responsible for the administrative duties and who may be designated as agent or agents for all owners for the service of legal process and possess such power and authority as may be provided in the bylaws.

§ 8. Compliance with Covenants, Bylaws, and Administrative Provisions.) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declarations or in the deed to his unit. Failure to comply with such provisions shall be ground for an action to recover sums due for damages, injunctive relief or such other relief as a court of proper jurisdiction may provide by the administrative body or in a proper case, by an aggrieved unit owner.

§ 9. Partition Not Available—Exceptions.) The provisions of chapter 32-16 relating to partition of real property shall not be available to any owner of any interest in real property included within a project established under this Act as against any other owner or owners of any interest or interests in the same project, so as to terminate the project.

An action may be brought by one or more unit owners in a project for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were tenants-in-common in the entire project in the same proportion as their interests in the common areas, provided, however, that a partition by sale shall be made only upon the showing that:

1. Three years after damage or destruction to the project which renders a material part thereof unfit for its prior intended use, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

2. That all or a substantial and material portion of the project has been destroyed or substantially damaged, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration of the project, or

3. The project is obsolete and uneconomic, and that condominium owners holding in aggregate more than a fifty percent interest in the common areas are opposed to repair or restoration of the project.

§ 10. Withdrawal of Property from Project—Recording—Subsequent Project.) Any property so constituted as a condominium project may be removed therefrom at any time, provided the sole owner or all of the owners execute, acknowledge, and record a declaration evidencing such withdrawal. If at such time there are any encumbrances or liens against any of the units, such declaration will be effective only when the creditors holding such encumbrances or liens also execute and acknowledge such declaration, or their encumbrances or liens are satisfied, or expire by operation of law.

No withdrawal of any property from a condominium project shall be a bar to any subsequent commitment to a condominium project.

§ 11. Liens Against Units for Common Expenses—Removal from Lien—Effect of Part Payment.) A reasonable assessment for common expenses made by the administrative body upon any condominium and made in accordance with the recorded declaration and bylaws shall be a debt of the owner

thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs, and penalties, as such may be provided for in the declarations and bylaws, shall be and become a lien upon the condominium assessed when the administrative body causes such assessment to be recorded in the office of the register of deeds for the county in which such condominium is located. The notice of assessment shall state the amount of such assessment and other charges and the name of the record owner thereof. Such notice shall be signed by an authorized representative of the administrative body or as otherwise provided in the declarations and bylaws. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the administrative body shall cause a notice to be recorded stating the satisfaction and the release of the lien thereof.

§ 12. Other Liens—Removal from—Part Payment.) Subsequent to recording the declaration provided for in section 2 of this Act and while the property remains enrolled as a condominium project, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual units and general common elements and limited common elements where applicable, appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

In the event a lien against two or more units becomes effective, the owners of the separate units may remove their unit and the general common elements and limited common elements where applicable appurtenant to such unit from the lien by payment of the fractional or proportional amounts attributable to each of the units affected. Such individual payments shall be computed by reference to the fractions or percentages appearing on the declaration provided for in section 2 and bylaws annexed thereto. Subsequent to any such payment, discharge or other satisfaction the individual unit and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied, or discharged.

§ 13. Real Property Tax and Special Assessments—Levy on Each Unit.) All real property taxes and special assessments shall be levied on each unit and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such units and appurtenances are separately owned, and not on the entire project.

Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

Approved March 10, 1965.

CHAPTER 312

H. B. No. 799
(Krenz, Solberg, Dick)

TRANSFER OF PERFORMING RIGHTS TAX

AN ACT

To amend and reenact section 47-21-08 of the North Dakota Century Code, relating to the administration and collection of the tax on performing rights in music or dramatico-musical compositions, and transferring the tax collecting functions from the state treasurer to the state tax commissioner.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 47-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-21-08. Tax Levied on Selling and Licensing Performing Rights of Music or Dramatico-Musical Compositions—Payable to State Tax Commissioner.) A tax shall be levied and collected for the act or privilege of selling, licensing, or otherwise disposing of performing rights in music or dramatico-musical compositions in this state, in an amount equal to five percent of the gross receipts of all such sales, licenses, or other disposition of performing rights in this state, payable to the state tax commissioner for the benefit of the general fund of the state, on or before the fifteenth day of March of each year, with respect to the gross receipts of the preceding calendar year. The state tax commissioner shall adopt and publish rules and regulations not in conflict herewith, as well

as a form of return and any other forms necessary to carry out the provisions of this section.

Approved March 10, 1965.

CHAPTER 313

H. B. No. 883
(Stockman)

SAVINGS INSTITUTIONS UNDER GIFTS TO MINORS ACT

AN ACT

To amend and reenact sections 47-24-01, 47-24-02, 47-24-03, 47-24-04, and 47-24-06 of the North Dakota Century Code, to bring savings and loan and building and loan associations within the provisions of the North Dakota Uniform Gifts to Minors Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 47-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-01. Definitions.) In this chapter, unless the context otherwise requires:

1. "Adult" is a person who has attained the age of twenty-one years;
2. "Broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;
3. "Court" means the county court;
4. "Custodial property" includes:
 - a. all securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;
 - b. the income from the custodial property; and
 - c. the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or

- other disposition of such securities, money and income;
5. "Custodian" is a person so designated in a manner prescribed in this chapter;
 6. "Depository" is a bank, trust company, national banking association, savings bank, industrial bank, or other organization organized under title 6 of this code, and any federal or state savings and loan or building and loan association or other organization organized under title 7 of this code;
 7. "Guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;
 8. "Issue" is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;
 9. "Legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;
 10. "Member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;
 11. "Minor" is a person who has not attained the age of twenty-one years;
 12. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may

be registered upon books maintained for that purpose by or on behalf of the issuer;

- 13. "Transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;
- 14. "Trust company" is a bank authorized to exercise trust power.

§ 2. Amendment.) Section 47-24-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-02. Manner of Making Gift.) An adult person may, during his lifetime, make a gift of a security, money or life insurance policy to a person who is a minor on the date of the gift:

- 1. If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed in substance, by the words: "as custodian for (name of minor)under the North Dakota Uniform Gifts to Minors Act."
- 2. If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"Gift Under The North Dakota Uniform Gifts To Minors Act

I, (name of donor)..... hereby deliver to (name of custodian)..... as custodian for (name of minor).....under the North Dakota Uniform Gifts to Minors Act, the following security:

(insert an appropriate description of the security or securities delivered sufficient to identify it or them.)

.....(signature of donor).....

.....(name of custodian)..... hereby acknowledges receipt of the above described security as custodian for the above minor under the North Dakota Uniform Gifts to Minors Act.

Dated..... (signature of custodian)....."

3. If the subject of the gift is money, by paying or delivering it to a broker or a depository for credit to an account in the name of the donor, another adult person, an adult member of the minor's family, a guardian of the minor, or a depository with trust powers, followed, in substance, by the words: "as custodian for(name of minor)..... under the North Dakota Uniform Gifts to Minors Act."
4. If the subject of the gift is a life insurance policy by making a written assignment of all rights thereto.

Any gift made in a manner prescribed in this section may be made to only one minor and only one person may be the custodian.

A donor who makes a gift to a minor in a manner prescribed in this section shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this section, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

§ 3. Amendment.) Section 47-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-03. Effect of Gift.) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, depository, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter.

§ 4. Amendment.) Section 47-24-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-04. Duties and Powers of Custodian.) The custodian shall collect, hold, manage, invest and reinvest the custodial property, and:

1. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much

- of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose;
2. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education;
 3. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years, or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor;
 4. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this chapter;
 5. The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian;
 6. The custodian shall register each security which is custodial property and in registered form in the name

of the custodian, followed, in substance, by the words: "as custodian for(name of minor)..... under the North Dakota Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in a depository in the name of the custodian, followed, in substance, by the words: "as custodian for(name of minor)..... under the North Dakota Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property;

7. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years;
8. A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

§ 5. **Amendment.**) Section 47-24-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-06. Exemption of Third Persons from Liability.) No issuer, transfer agent, depository, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian or any money or other property paid or delivered to him.

Approved March 10, 1965.