

LIENS

CHAPTER 378

SENATE BILL NO. 2424
(Olson)

LIENS SECURED BY PURCHASE MONEY SECURITY INTERESTS

AN ACT to amend and reenact section 35-01-04 of the North Dakota Century Code, relating to creation of liens secured by purchase money security interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-01-04. Creation of lien by contract or by operation of law - Special circumstances and exception. A lien or security interest is created by contract or by operation of law. No lien arises by operation of law until the time at which the act to be secured thereby ~~ought~~ is to be performed. A security interest in personal property is governed by chapter 41-09, except that a bill of sale or security agreement, that is not a purchase money security interest, with respect to household goods, effects, furniture of married persons, or personal property exempt from execution is void unless the instrument by which it is transferred or encumbered is jointly executed by the husband and wife, if both are living. This section ~~shall~~ does not apply to transfers or liens arising by operation of law nor to security agreements relating to threshed grains made with any ~~leasing~~ lending agency authorized to make commodity credit corporation loans on threshed grains.

Approved March 17, 1983

CHAPTER 379

SENATE BILL NO. 2343
(Heigaard)

COLLATERAL REAL ESTATE MORTGAGES

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to collateral real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Collateral real estate mortgages. A mortgage which contains the following statement in printed or typed capital letters: "THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO NORTH DAKOTA CENTURY CODE CHAPTER 35-03," is subject to the provisions of this section. A mortgage executed pursuant to this section shall be entitled in printed or typed capital letters: "MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE." A mortgage made pursuant to this section shall, notwithstanding the fact that from time to time during the term thereof no indebtedness shall be due from the mortgagor to the mortgagee, constitute a continuing lien against the real property covered thereby for the amount stated in the mortgage. Any sums not exceeding the face amount of the mortgage, together with interest thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee during the term of the mortgage have a lien priority as of the date the mortgage was filed. At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial, agricultural or consumer loans or lines of credit including, but not limited to, revolving notes and credits and overdraft checking plans.

A filed collateral real estate mortgage which states a maturity date of the instrument secured thereby of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed collateral real estate mortgage is effective for a period of five years from the date of

filing and thereafter for a period of sixty days. A filed collateral real estate mortgage which states that the instrument secured thereby is payable on demand is effective for five years from the date of filing and thereafter for a period of sixty days. The effectiveness of a filed collateral real estate mortgage lapses upon the expiration of the sixty-day period unless an addendum to the collateral real estate mortgage extending its effective date is filed prior to the lapse. Upon such lapse, the lien created by the collateral real estate mortgage shall terminate. An addendum continuing the effectiveness of the lien of the collateral real estate mortgage may be filed by the mortgagee:

1. Within six months before and sixty days after a stated maturity date of five years or less; and
2. Otherwise within six months before and sixty days after the expiration of the five-year effective date period.

An addendum to a collateral real estate mortgage for the sole purpose of continuing the effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate mortgage will be continued for five years after the stated maturity date in those instances where the original collateral real estate mortgage provided a maturity date or for five years after the expiration of the five-year period whereupon it shall lapse in the same manner as provided above unless another addendum to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to collateral real estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the collateral real estate mortgage.

Approved March 29, 1983

CHAPTER 380

HOUSE BILL NO. 1273
(Representatives A. Olson, Olafson)
(Senator Vosper)

GRAIN THRESHING AND DRYING LIEN

AN ACT to amend and reenact sections 35-07-01, 35-07-02, and 35-07-03 of the North Dakota Century Code, relating to the availability, procedure for obtaining, and the priority of a grain threshing and drying lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-07-01. Threshing and drying lien - Who may have - Conditions. The owner or lessee of a threshing machine or combine or a grain drying machine who threshes or dries grain ~~therewith~~, upon filing the statement prescribed in section 35-07-02, ~~shall have~~ has a lien upon the grain threshed or dried for the reasonable value of ~~his~~ those services, effective from the date of the commencement of the threshing or drying.

SECTION 2. AMENDMENT. Section 35-07-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-07-02. Procedure to obtain lien - Statement filed - Contents - Waiver. Any person entitled to a threshing or drying lien, within ninety days after the threshing or combine threshing or grain drying is completed, shall file in the office of the register of deeds of the county or counties in which the grain was grown a verified statement in writing stating all of the following:

1. The kind and quantity of grain dried or threshed or combine threshed and harvested.
2. The name of the person for whom the threshing or drying was done.
3. A description of the land upon which the grain was grown.

4. The price agreed upon for drying or threshing or combine threshing and harvesting, whether by the acre [.40 hectare], bushel [35.24 liters], hour, or day, and if no price was agreed upon, the reasonable value of such services.

Unless if the statement is not filed within ninety days as aforesaid required by this section, the person entitled to the lien shall be deemed to have waived his right thereto waives it.

SECTION 3. AMENDMENT. Section 35-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-07-03. Priority of threshing lien. A threshing or drying lien shall have has priority over all other liens and encumbrances upon the grain threshed or dried, including mortgages upon the crop or grain given by the person claiming the lien, and a threshing or drying lien shall does not inure to a holder of a mortgage upon the grain covered by the threshing or drying lien. For the purposes of this chapter, grain threshing and drying liens have equal priority.

Approved March 3, 1983

CHAPTER 381

SENATE BILL NO. 2359
(Senators David, Tallackson)
(Representatives Whalen, Horgan)

UNPAID EARNED INSURANCE PREMIUMS LIEN

AN ACT to provide for a lien for unpaid earned property or casualty insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Lien for unpaid earned property or casualty insurance premiums. An insurance agent, insurance broker, or surplus lines insurance broker licensed to do business in this state, upon filing the statement provided for in section 2, has a lien on the covered property for the amount of any unpaid earned property or casualty insurance premium.

SECTION 2. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after cancellation of the policy is effective, must file in the office of the register of deeds of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name of the policyholder.
2. The nature and quantity of insurance coverage provided.
3. The amount of unpaid earned premium.
4. A description of the property covered by the insurance and subject to the lien.
5. That a lien is claimed upon the property described.

Approved March 18, 1983

CHAPTER 382

HOUSE BILL NO. 1205
(Committee on Industry, Business, and Labor)
(At the request of the Bank of North Dakota)

REAL PROPERTY MORTGAGE FORECLOSURE

AN ACT to amend and reenact section 35-22-01 of the North Dakota Century Code, relating to the foreclosure by the state of a real property mortgage by advertisement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-22-01. Foreclosure under power of sale - Prohibition - Exception. Every mortgage of real property executed to the president of the Bank of North Dakota, as mortgagee, and every mortgage of real property heretofore or hereafter executed to the Bank of North Dakota, as mortgagee, and every mortgage negotiated by the board of university and school lands to held by the state of North Dakota as mortgagee, or any of its agencies, departments, or instrumentalities, containing a power of sale, upon default being made in the conditions of such mortgage, may be foreclosed by advertisement in the manner provided by law. No other mortgage of real property shall be so foreclosed, but must be foreclosed by action.

Approved March 3, 1983