

2021 SENATE POLITICAL SUBDIVISIONS

SB 2292

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2292
2/11/2021

A BILL for an Act to create and enact section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications; and to amend and reenact sections 35-03-14 and 35-03-15 of the North Dakota Century Code, relating to the expiration and extension of real estate mortgages.

Chairman Burckhard opened the hearing on SB 2292 at 8:30 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Processing applications during extension
- Government loans V.S. Adjustable rate mortgages

[8:31] Rick Clayburgh, President & CEO, North Dakota Bankers Association. Provided testimony #6365 in favor as well as a Mortgages modification document (testimony #6302).

[8:42] John Ward, Lobbyist, North Dakota Land and Title Association. Provided oral testimony in favor.

[8:43] Blaine Johnson, State Bar Association of North Dakota. Provided oral neutral testimony.

Senator Anderson moves **DO PASS**.

Senator Heitkamp seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

Senator Kannianen will carry SB 2292.

Additional written testimony: N/A

Chairman Burckhard closed the hearing on SB 2292 at 8:47 a.m.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2292: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.

Testimony of Rick Clayburgh
North Dakota Bankers Association
SB 2292
February 11, 2021

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Rick Clayburgh, President and CEO of the North Dakota Bankers Association (NDBA). I am here today on behalf of the NDBA to express our support for SB 2292.

The main purpose the bill is to allow a mortgagor and a mortgagee to enter into a mortgage modification for the purpose of extending the mortgage lien past its maturity date and to clarify that under the law the mortgage lien will be valid and effective 10 years from the modification's new mortgage maturity date and if no new maturity date is stated then 10 years from the date of the modification. The second purpose of the bill is to take an opportunity to clarify the language of existing law.

SECTION 3: Creates a new Section in the Century Code 35-03-15.1, which allows the parties to a mortgage to subsequently modify the mortgage to extend the maturity and its effectiveness by stating that if modified, the lien shall be effective for 10 years from the date of the last modified maturity date or 10 years from the date of the modification if no new maturity date is stated. Quite simply, this provision will save the parties the time and expense of entering into a new mortgage.

SECTION 1: Changes to Section 35-03-14 were made to reference the new section 35-03-15.1.

SECTION 2: Changes to Section 35-03-15 were made to reference the new section 35-03-15.1. In addition, to clarify that foreclosure by advertisement (only available to the government) will extend a mortgage, and to allow a mortgage holder who records a notice of enforcement of an assignment of rents to be treated the same as a mortgage holder who takes possession of the property. The rest of the changes were grammatical clarifications.

Thank you, Mr. Chairman – NDBA requests your favorable consideration with a **Do Pass** on SB 2292. I would be happy to try to answer any questions.



Mortgages

Expiration – Extension – Modification

NDBA has proposed amendments to sections 35-03-14 and 35-03-15 of the North Dakota Century Code, relating to the expiration and extension of mortgage liens; as well as the creation of section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications.

Background and Issue

[Section 35-03-14](#) provides the date of expiration for mortgage liens, while [section 35-03-15](#) provides occurrences that extend the expiration date.

Old case law indicates that under prior versions of 35-03-14, the expired mortgage was simply cleared from the record, but remained enforceable between the direct parties to the instrument.¹ The beneficiaries of this would have been subsequent purchasers or encumbrancers who would be protected by the empty record. The need for this bill is a change from this being a statute that allows title searchers to ignore stale mortgages to a statute that indicates they are expired as to all persons for all time.

The point of the amendments is to prevent an inequitable result of a mortgage between the parties being “expired” under the statute and unenforceable as between the parties.

This issue comes up with a construction mortgage for a 1-year period that is then modified to extend the term into permanent financing; or where the same mortgage is modified several times.

Amendment to 35-03-14

As stated, section 35-03-14 provides the date of expiration for mortgage liens. The calculation of the expiration date is currently dependent upon whether an extension has occurred pursuant to 35-03-15. The amendment simply adds a reference to the newly proposed [section 35-03-](#)

[15.1](#) (mortgage modifications) as an exception to the general rule regarding mortgage expiration.

Amendment to 35-03-15

Section 35-03-15 provides that mortgage liens will not expire per 35-03-14 if certain events have occurred prior to the expiration date calculated in 35-03-14. Similar to 35-03-14, this section has been amended to refer to the newly proposed section 35-03-15.1. The amendment includes the mortgagor’s recordation of a notice of enforcement of an assignment of rents related to the mortgaged property as an event extending the expiration date.

Creation of 35-03-15.1

This section first and foremost recognizes mortgage modifications and defines them as a written instrument amending at least one term of an original mortgage which both references the original mortgage by recording date and document number and is signed by the mortgagor and mortgagee.

It also clarifies that the lien of the mortgage will expire 10 years after the maturity date unless the mortgage is modified to extend the maturity date, in which case the lien will expire 10 years from the extended maturity date; or, if not ascertainable from the record, that expiration shall occur 10 years from the recording of the modification if such modification is recorded within 10 years of the recording of the original mortgage. Minor changes to title standard 8-01 are predicted.

¹ See *Magnuson v. Breher*, 284 N.W. 853, 855 (N.D. 1939) (“The evident purpose of the statute is to clear the public record of old and unrenewed mortgages, not to bar action upon enforceable existing ones...Thenceforth, so far as the

mortgage is concerned, it is as though it had never been recorded. Otherwise there is no change in its effect either as between the parties to the contract or as to third persons.”).

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2292

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2292
3/22/2021

Expiration & extension of real estate mortgages.

(2:36) Chairman Lefor called the hearing to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

Discussion Topics:

- Mortgage lien
- Mortgage modification

Rick Clayburgh~President & CEO-ND Bankers Association. Attachment #10263.

Blaine Johnson~Attorney. Testified in support.

Chairman Lefor closed the hearing.

Vice Chairman Keiser moved a Do Pass.

Rep Stemen second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	N
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 13-1-0 & Rep Louser is the carrier. (2:51) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2292: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Fourteenth order on the calendar.

**Testimony of Rick Clayburgh
North Dakota Bankers Association
SB 2292
March 22, 2021**

Chairman Lefor and members of the House Industry Business & Labor Committee, my name is Rick Clayburgh, President and CEO of the North Dakota Bankers Association (NDBA). I am here today on behalf of the NDBA to express our support for SB 2292.

The main purpose the bill is to allow a mortgagor and a mortgagee to enter into a mortgage modification for the purpose of extending the mortgage lien past its maturity date and to clarify that under the law the mortgage lien will be valid and effective 10 years from the modification's new mortgage maturity date and if no new maturity date is stated then 10 years from the date of the modification. The second purpose of the bill is to take an opportunity to clarify the language of existing law.

SECTION 3: Creates a new Section in the Century Code 35-03-15.1, which allows the parties to a mortgage to subsequently modify the mortgage to extend the maturity and its effectiveness by stating that if modified, the lien shall be effective for 10 years from the date of the last modified maturity date or 10 years from the date of the modification if no new maturity date is stated. Quite simply, this provision will save the parties the time and expense of entering into a new mortgage.

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