

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2205
(Senator Holmberg)

AN ACT to create and enact section 32-19-23.1 of the North Dakota Century Code, relating to abandoned property; and to amend and reenact sections 28-23-11, 32-19-18, 32-19-19, 32-19-23, and 32-19-27 of the North Dakota Century Code, relating to foreclosure of real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

28-23-11. Purchaser's right - Sheriff's certificate.

1. The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the debtor to the property. If the estate is a leasehold less than two years' unexpired term, the sale is absolute. Otherwise, the real property is subject to redemption under this title. The officer shall give to the purchaser a certificate of sale containing:
 - a. A particular description of the real property sold;
 - b. A statement of the price bid for each distinct lot or parcel;
 - c. A statement of the whole price paid;
 - d. If subject to redemption, a statement to that effect, including the applicable redemption period; and
 - e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.
2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

SECTION 2. AMENDMENT. Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

32-19-18. Redemption.

A party in a foreclosure action or the successor of a party may redeem from the foreclosure sale within sixty days after the sale, except for abandoned property as provided in section 32-19-19 and agricultural land. Agricultural land may be redeemed within three hundred sixty-five days after the filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the sheriff's sale. The owner of the property has a paramount right to redeem upon paying the amount bid at the sheriff's sale plus interest on that amount at the same rate as the obligation secured by the mortgage. Persons holding subordinate liens on the property may redeem in the order of priority as determined by the order of attachment to the property. This redemption has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount, if any, determined to be due as of that date.

SECTION 3. AMENDMENT. Section 32-19-19 of the North Dakota Century Code is amended and reenacted as follows:

32-19-19. Injury to property restrained - Abandoned real property.

The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage ~~thereon~~ the real property and until the expiration of the time allowed for redemption. If at the time of the commencement of the foreclosure action and at any time before the sheriff's sale the mortgagee, or after the sheriff's sale the holder of the sheriff's certificate of sale, reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may allege abandonment in the complaint or petition the court to determine abandonment. Alf by petition, a notice of hearing must be sent by mail to the last-known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court determines that the real property is abandoned, the court may eliminate the redemption period in the foreclosure judgment or, upon petition, grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may ~~proceed at the hearing to~~ consider remedies to prevent waste in a foreclosure action or upon a petition for abandonment. The provisions of this section concerning abandoned real property do not apply to agricultural property as defined by section 57-02-01.

SECTION 4. AMENDMENT. Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

32-19-23. When notice not required.

1. If the record title to real estate is in the name of a deceased person, notice before foreclosure need not be served unless a personal representative of the estate is appointed in the county in which the real estate is situated. The certificate of the judge or clerk of the district court serving the county in which the real estate is situated stating that a personal representative has not been appointed is sufficient evidence of that fact.
2. Actual service of the notice before foreclosure is not required if the property is abandoned as provided under section 32-19-23.1, or if service by mail as provided in this chapter has been attempted three times and the attempted service is returned as refused or unclaimed.

SECTION 5. Section 32-19-23.1 of the North Dakota Century Code is created and enacted as follows:

32-19-23.1. Abandoned property - Prima facie evidence.

1. An affidavit under this section is prima facie evidence of abandonment if the affidavit is made by:
 - a. The sheriff or sheriff's deputy of the county in which the mortgaged premises is located, or of a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises, and the affidavit states the mortgaged premises are not actually occupied; or
 - b. The party foreclosing a mortgage, holding a sheriff's certificate, or an agent or contractor of the party foreclosing the mortgage, and the affidavit states the affiant has changed the locks on the mortgaged premises and a party having a legal possessory right has not requested entrance to the premises for at least ten days.
2. An affidavit under this section must include at least one of the following facts:
 - a. Windows or entrances to the premises are boarded or shuttered, or multiple window panes are broken;
 - b. Doors to the premises are destroyed, broken, unhinged, or continuously unlocked;

- c. Gas, electric, or water service to the premises has been terminated;
 - d. Rubbish, trash, or debris has accumulated on the mortgaged premises;
 - e. Law enforcement has received at least two reports of trespassers, vandalism, or other illegal acts on the premises; or
 - f. The premises is deteriorating and either below or in imminent danger of falling below minimum community standards for public safety and sanitation.
3. This section applies only to mortgaged property that is:
- a. Ten acres or less;
 - b. Improved with a residential dwelling that consists of fewer than five units and is not a model home or under construction; and
 - c. Not used in agricultural production.

SECTION 6. AMENDMENT. Section 32-19-27 of the North Dakota Century Code is amended and reenacted as follows:

32-19-27. Proofs relative to notice - How made and filed.

Proof of service of notice before foreclosure may be made by the return of a sheriff or other officer, or by affidavit of the person making personal service or mailing such notice. Proof of death of the title owner of record may be made by a certified copy of the death certificate or by affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show that the notice was properly served, service was attempted and refused or unclaimed, or the property is abandoned may be made by certificate of a proper officer or of an abstractor or by affidavit of any person having knowledge of the facts. Such proofs together with the notice ~~shall~~must be filed with the complaint in any action for the foreclosure of a mortgage and ~~shall~~must be recorded with the notice and certificate of sale in foreclosures by advertisement.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2205.

Senate Vote: Yeas 43 Nays 2 Absent 2

House Vote: Yeas 61 Nays 29 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State