

2021 SENATE POLITICAL SUBDIVISIONS

SB 2223

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2223
1/28/2021

A BILL for an Act to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to a deed in lieu of foreclosure.

Chairman Burckhard opened the hearing on SB 2223 at 2:25 p.m.
Senators Burckhard, Anderson, Lee, Larson, Oban, Kannianen, Heitkamp were present.

Discussion Topics:

- Federal bankruptcy code
- Deed in lieu / contingent
- Conditional delivery
- Signatures of all parties on bankruptcy plan
- Judgement of foreclosure
- Proposed amendment 21.0857.01002 by Senator Hogan
- Jurisdictional authority

[2:27] Senator Kathy Hogan District 21 Introduced SB 2223.

[2:27] Jim Dotzenrod Citizen Provided testimony #4012 in favor.

[2:33] John Finstad, Citizen Provided testimony #4090 and #4111 in favor.

[2:46] John Ward, Lobbyist on behalf of ND Land Title Association. Introduced Nick Hacker. #3607

[2:46] Nick Hacker ND Land Title Association President ND Guaranty and Title Co. Provided testimony #4139 in opposition.

[2:54] Rick Clayburgh President and CEO, ND Bankers Association. Provided testimony #4105 in opposition.

[2:57] Barry Haugen, President, Independent Community Banks of ND. Provided testimony #4051 in opposition.

[2:59] Blaine Johnson Chair Real Property Section of the State Bar Association of N D Provided testimony #4109 in opposition.

Additional written testimony: (4)

Lyle Thomanson, Attorney, Lisbon ND, Provided testimony #4040 in favor.

Katie Paulson McKenzie County Recorder, Provided testimony #4120 in opposition.

Carrie Krause, Wells County Recorder, Provided testimony #3834 in opposition.

Dana Bohn, Executive Director, ND Farm Credit Council, In opposition #4013

Chairman Burckhard closed the hearing on SB 2223 at 3:17 p.m.

Patricia Lahr, Committee Clerk

Testimony on SB2223, Senate Political Subdivisions Committee

Submitted by Jim Dotzenrod, January 28, 2020

Chairman Burckhard and members of the committee. I want to begin by thanking Senator Hogan for introducing this bill on behalf of Mr. Finstad and his interest to see if there is a way to correct a problem that he had in maintaining his ownership of the farmland and farmstead that he and his wife had owned and operated East of Lisbon in Ransom County since 1986.

The reason this bill is here today is to try to assure any debtor who ends up in Federal Bankruptcy Court that all the evidence, that bears on the question of their clear title to and ownership of subject property, is available to and can be considered by the court in making that decision. Mr. Finstad was in Federal Bankruptcy Court when he had provided a deed in lieu of foreclosure to a lender in exchange for a contract for deed that spelled out the terms for him to pay off the property. He made good progress on paying off that contract for deed. At some point he ended up in District Court and later on in the ND Supreme Court where the decision was made by the court that the deed in lieu of foreclosure was a "stand alone document", that they(the court) were not allowed to consider any information or documents that were "outside the 4 corners of the deed", given the parole evidence rule. The Finstads and their lender had developed a Confirmed Bankruptcy Plan which included this property and terms negotiated to give Mr. Finstad an additional five years to regain financial stability and pay off the lender. The Federal Bankruptcy court had all the documents, made it clear that they disagreed with the state courts decision, but they did not have the authority to overrule the state court.

It does appear that the ND District Courts and the Federal Bankruptcy Courts do not coordinate or talk to each other. It also seems wrong not to look at all the evidence that the courts have available to try to arrive at a decision that is fair and reasonable. That is why SB2223 is here.

There are amendments to this bill and it is my hope that the committee would adopt these amendments independent of how you choose to act on the bill. The original bill was too general and affected too many other deeds and title transfers. The amendment confines itself to Federal Bankruptcy Court and Confirmed Bankruptcy Plans. The amendment sets up guardrails and clear lines of jurisdictional authority in this limited number of cases where all the evidence and all the parties need to be involved in resolving questions of property ownership and debt.

Testimony to the North Dakota Senate Judiciary Committee on January 28, 2021

1. Introduction of John and Lorie Pre-Farm Purchase.
2. Lobbying, Purchase of the farm, first few years, lowering the loan.
3. Remembering the 90's 1992- 1993, loss of our lender, no crop insurance.
4. New lender in the late 90's, Jill and Amy situation
5. Landlord and John and Lorie Sold land to a Rural Water system, because it was the best management decision. Rent back breach.
6. Lost current Lender, sought out Beresford Bancorp. Paid double interest
7. Limited operating by the lender, so I could not farm or ranch properly.
8. Worked off the farm, Met Jim Gord
9. Had to file Bankruptcy to protect our equity. Approached Jim Gord
10. Borrowed from Jim Gord to pay off Beresford, Difference in Money owed based on our Bankruptcy Settlement Agreement.
11. Owed both Jim and Beresford
12. Beresford wanted out, QCD, theft of QCD, Gord's assurances to Warren Anderson.
13. Despite Gord's Assurances try to sell the land for a quick profit.
14. 2009- rent the land out, Grazing Association Ran cattle, 3 year rule
15. Fall 2011, want to pay off the Gord's, Blindside with eviction.
16. Various Court action and we are here today.
17. Admit to letting people down, but have always tried to make it right.

Time Line of the Finstad Farm

The time line is meant to summarize the struggles of the Finstads since 2006. This will hopefully give an understanding of the lack of legal Jurisdiction over signed agreements.

2005 The Finstad's filed Bankruptcy

1. David Johnson was the bankruptcy attorney for John and Lorie.
 2. Brad Sinclair was the attorney for Beresford Bancorp (Frank Farrar)
 3. October 21, 2005 The negotiations for the Settlement Agreement were started.
(Documented)
 4. October 24, 2005 Meeting in front of Judge Hill in the bankruptcy court.
(Documented in Transcript)
 5. October 25, 2005 Letter from Brad Sinclair to David Johnson in regards to the Settlement Agreement. (Documented)
 6. November 4, 2005 David Johnson's letter to Brad Sinclair about attorney fees.
(Documented)
 7. December 30, 2005 Quit Claim Deed with Anti-Merger was signed by John and Lorie Finstad.
(Documented)
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8. December 30, 2005 There was a Contract for Purchase entered into but not signed until October 9, 2006. (Documented)

2006

1. January 10, 2006 A Deed in Lieu Foreclosure was entered into as part of the bankruptcy plan.
(Documented) A Settlement Agreement was entered into between the two parties. An amount was settled on what was owed, and a rate of interest was settled on, as well as other stipulations included ensuring the Finstad's interests. (Documented)
2. January 10, 2006 A Memorandum of Lease and Option to Purchase was entered into.
(Documented)
3. March 15, 2006 A communication to further confirm the base amount owed to Beresford.
(Documented)
4. March 17, 2006 A Farm Lease Agreement was entered into between Brian Vculek and the Finstads to guarantee a steady stream of farm income. (Documented)
5. May 16, 2006 David Johnson emailed Brad Sinclair about a commitment letter from Jim Gord's Banker at First Farm Credit. A loan was secured from Jim Gord. The purpose of the loan was to pay off Beresford, per the Settlement Agreement that was provided for in the confirmed bankruptcy plan. (Documented)
5. May 25, 2006 and June 12, 2006 David Johnson sent Brad Sinclair a payoff calculation, but Beresford added extra fees and interest so the amount that the Finstads had calculated, and the amount to pay off Beresford, was different. (Documented)
6. June 7, 2006 Money was paid to Beresford from a loan that Finstads obtained from Jim and Wendy Gord. Beresford added several fees that were not in the confirmed plan amount. This created a 1st and a 2nd mortgage on the Finstad Farm, with Beresford having the 1st

mortgage and the Gords having the 2nd mortgage. The 2nd Mortgage Agreement was signed by the Finstads. (Documented)

7. July 31, 2006 A letter from the Sheyenne Valley Grazing Association (SVGA) was sent to Beresford questioning the ownership of the Finstad Farm. (Documented)
8. August 3, 2006 A letter from Frank Farrar, as Chairman of the Board of Beresford Bancorp, to the SVGA stated that the only thing that had changed was the way that the Finstad Farm was being financed. (Documented)
9. October 9, 2006 A letter from Brad Sinclair to David Johnson as to the disbursement of the money from Jim Gord. (Documented)
10. October 10, 2006 A further understanding of the disbursement of funds. (Documented)
11. October 31, 2006 A letter from Don Eppler, the attorney representing the Sheyenne Valley Grazing Association, reaffirms that the Finstads changed financing from a mortgage to a contract for deed. There was no change of ownership or control of property. (Documented)

2007

1. Due to the rental contract between Brian Vculek and the Finstads, it was determined by the Sheyenne Valley Grazing Board that the Finstads did not have enough land to meet their rule requirements, and the Finstad Farm was denied its grazing permit in the years 2007, 2008, and 2009.

2008

1. There was still no resolution of the amount of money owed to Beresford. There was a difference of opinion with respect to a breach of the Settlement Agreement that was part of the confirmed bankruptcy plan.
2. May 22, 2008 A limited warranty deed was prepared and signed by Beresford's Frank Farrar, but the Finstads only received a copy of the limited warranty deed, not the original. (Documented)
3. June 11, 2008 A notice of default was sent to John and Lorie Finstad by Beresford. There was no default according to the terms within the Settlement Agreement. (Documented)
4. June 20, 2008 A letter from Mike Nelson, Jim Gord's attorney, to David Johnson, the Finstad's attorney. This letter discussed the payoff of Jim and Wendy Gord by Warren Anderson. (See no. 5 below.) Nelson made it clear that Judge Hill and the bankruptcy court should have a say in this situation, and that he was not a bankruptcy attorney. (Documented)
5. August 8, 2008 Warren Anderson, an attorney and investor that John Finstad had been in communication with, contacted Brad Sinclair so that he could make a decision on whether or not to buy out Gords' loans. (Documented)
6. August 13, 2008 A letter from Jon Brakke (another attorney of Gord's) to David Johnson stated that Gord's loans were never approved by the bankruptcy court and that any discharge associated with the bankruptcy would not have any effect on the debt to his clients, the Gord's. (Documented)
7. September 2008 Beresford claimed that there was a default in the bankruptcy agreement, so they put the Finstad farm up for sale in 4 different parcels, pursuant to the Settlement

Agreement that had been signed. It should be noted that Beresford only had the right to sell enough land to pay their calculated debt, according to the bankruptcy confirmed plan.

(Documented)

8. September 2, 2008 There were bids up to \$950,000.00 without any oral bidding.
(Documented)
9. The sale was called off due to negotiations between the Gord's and Beresford. There was a desire by Warren Anderson and Jim Gord to pay off Beresford.
10. Warren Anderson was willing to pay off Gord in full, but there was a suggestion that Jim pay Beresford off, being there was already an investment by Jim already. Jim Gord gave his word to Warren that he was not interested in taking the Finstad Farm, but only to get his money back. Warren took him at his word and bowed out of the negotiations to pay off Beresford. (See Letters of Communication)
11. September 2, 2008 Bids for the sale of the land were received by attorney Brad Sinclair. John and Lorie Finstad put a bid in on the farm. According to the Settlement Agreement, Beresford, could only be paid what they were owed. This amount was disputed. Beresford calculated an amount of \$64,000.00+/-, and the Finstad's attorney had calculated an amount of \$16,000.00+/-.
12. September/October 2008 There were negotiations between Beresford's attorney and Jim Gord's attorney about paying off Beresford without the knowledge of John and Lorie Finstad. Once the sale of the land was called off, the Finstads were notified of the negotiations between the parties. The Finstads weren't given the opportunity to personally monitor the negotiations. (Documented)
13. October 9, 2008 There was a letter drafted from Brad Sinclair to Jon Brakke in which Beresford confirmed that the Gord's and Bersford had been negotiating an agreement between themselves about the Finstad farm and a way for Beresford to be paid off. The main point sticking point was on how Bersford was going to ensure their obligation to the Finstads that was contained in the Settlement Agreement that had been confirmed in the bankruptcy court. (Documented)
14. November 28, 2008 The Quit Claim Deed, drafted by Jon Brakke, was signed by Frank Farrar and in the possession of Brad Sinclair.
15. December 1, 2008 Brad Sinclair and Jon Brakke met to discuss the Quit Claim Deed and the Assignment Agreement that Sinclair had drafted. The intention of the Assignment agreement was to bind Jim and Wendy Gord , Beresford, and the Finstads to the Settlement Agreement contained in the bankruptcy plan. Brakke grabbed the QCD that Farrar had signed from Brad's desk and stated he saw it differently. Hethen left with the QCD.
16. December 2, 2008 An early morning e-mail communication from Sinclair to Brakke stated that there was no permission to file the QCD, for reasons explained in the e-mail.
(Documented)
17. December 2, 2008 at 4:30P.M. The stolen Quit Claim Deed was recorded at the Ransom County Court House. (Documented)

12.1-23-02. Theft of property. A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of

an interest in, the property of another with intent to deprive the owner thereof; 2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or 3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

12.1-23-04. Theft of property lost, mislaid, or delivered by mistake. A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or
2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

18. Copy of the QCD. (Documented)

19. Brads letter to Jon Brakke about the return of the QCD to him.

20.. Franks letter that he was more than willing to cooperate with the Finstads in any legal action that would be necessary for them to maintain their rights to the land.

2009

1. January 28, 2009 A letter from Brad Sinclair to John Finstad stating that despite Jim Gord's assurances to Warren Anderson about working with the Finstad's and not wanting to steal the Finstad farm, the Gord gang (Jon Brakke and Mike Nelson) were offering to sell the Finstad Farm to Brian Vculek for \$1,000,000.00. The offer was denied and a summarization of the Beresford obligation to the Finstad's was memorialized.
2. February 3, 2009 Brad Sinclair sent a letter to John and Lorie and Jon Brakke summarizing to past events and that given everybody has had full knowledge of what is expected of the Gord Gang, Beresford will go forward and cash the Cashier's check. The check was being held pending the return of the QCD that was stolen from Brads office at a December 2009 meeting. (Documented)
3. February-March 2009 Despite all of the legal actions Jim and John spoke several times and given all the legal actions going on, the Vculek Contract was cancelled and the Finstad farm for 2009 was rented to Troy Goltz.
4. John finding a renter for Jim Gord.
 - A. Jim and I had to rent the land out for the 2009 cropping year, I did not have the equipment to do the work, so I contacted several people and Troy Goltz was the person who rented the land for the 2009 cropping season.
 - B. There was a Rental Contract with Brian Vculek for an extended period of time. When this situation arose, there was a cancellation of the existing Contract that we had between John and Lorie and Beresford and Brian Vculek. Brad Sinclair as Beresford's Attorney contacted Brian and notified him that the contract was in the names of John and Lorie Finstad and Beresford Bancorp and that only John and Lorie had signed the contract and that Beresford had not signed the contract, therefore the contact was not a valid

agreement with him. By the cancellation of this contract we were free to rent the land to anybody we wanted to. There was one thing, Brian had put a special new end gun on my south pivot, Brian removed his end gun and the New Renter (Troy Goltz) had K-T Irrigation replace it with a new end gun. I asked Jim if he could pay for the end gun, being he was receiving the \$48,000.00 in rent for the 2009 cropping year. Jim stated that the pivot was owned by John and Lorie and that it was the Finstad's financial responsibility, I waited for 2 years and then I paid K-T irrigation for the end gun to the tune of \$1,700.00 and we were never paid for the endgun.

5. Mike Nelsons letter to us and how I spoke to him about the management agreement and how I disagreed on the statement that Jim owned our farm. Also we need the letter that I was sent to me via E-mail by Mike Nelson's paralegal and the promises that were made and never carried out. In the summer Mike Nelson went to the Grazing Board and claimed that Jim Gord was the title holder of the Finstad Farm. The Board ruled in favor of Jim Gord. The board did not make an attempt to contact their attorney (Don Eppler) whose previous opinion stated that we were the owners subject to the Settlement Agreement and the Confirmed Bankruptcy Plan. Don had previously agreed to our position of ownership to the Grazing Association in his previous assessment of our ownership. (Documented)

6. ~~Finstads didn't ever receive the communication back that was promised from Mike Nelson.~~
7. Jim sold my cows and kept the money.
8. The Finstad property has control of a Grazing Permit on Federal land located just east of Lisbon N.Dak. This permit is not owed but is tied to the Finstad deeded property. Even though there is no deed to this property it is very valuable. The Permit is for 163 head of cow calf pairs for 5.5 months. The cost each year is about \$3.50/month for 5.5 months at a total cost of about \$20.00 for the year on Federal Land and for rent on private land would be \$175.00-\$250.00 per head. You can obviously see that there is a tremendous advantage in having a Federal Grazing Permit.
9. First year's calf crop.
 - A. There was 102% calf crop
10. My discussion with Brian Stotts from the U.S. Forest Service about waiving the 3 year Federal and Grazing Association rule with regard to the buying and selling land when a Federal Grazing Permit is associated with privately owned land back to the same previous owner. Brian refused to waive the rule even though there were no changes in property from our ownership.
11. The Grazing Association did not want to waive the rule either.
12. My conversation with Jim about the depreciable assets on our Farm. I told Jim what everything is worth but that he did not own my farm. Jim's response was that "I may as well take advantage of the tax savings, until I paid him off.
13. Summer 2009 Mike Nelson (Attorney for Jim Gord) was present at a Sheyenne Valley Grazing Association meeting where he represented Jim about the Finstad Farm ownership. Despite the opinion of the SVGA's attorney the board was convinced by Mike Nelson that ownership had changed and there were questions about the permit.

14. Fall 2009 Jim needed to prove need for the Federal Grazing Permit, so we were living on our farm and despite my objections, Jim and I worked together. We were forced to sign over our grazing permit to Jim and Wendy Gord in order to preserve the Permit assigned to our deeded acres.
15. September, There is a federal government a rule that deeded land with a Federal Grazing permit may not be sold back to the previous owner for a period of 3 years. So given that rule I spoke to Brian Stotts (Forest Service Ranger) about the potential of waiving the Federal Regulation, after all there were no changes from what the land was before and in the before and after on the land and the Grazing Permit. Brian denied my request, stating that he did not want to get in the middle of the situation.
16. November 30, 2009 Jim bought my cows on a contract with the promise to sell them back me. In a letter to attorney Lyle Thomason he stated that he was drafting an agreement, so I signed the Management Agreement but I never received the separate Agreement that was promised in the Email. (Management Agreement and Email Documented)
17. December 2, 2009 Jim Gord bought cows from Scott and Al Johnson to make sure that there were enough cows on the farm for the SVGA rules.
18. In December John received a phone call from Jim, he requested the values of all the Depreciable assets on the farm, Ex (Irrigators, buildings etc.) I asked him Why, he stated that he wanted to Depreciate the assets, I told him that he did not own them and that I still did, his reply was "I may as well take advantage of them until you pay me off", so I told him the amounts and told him that if he gets caught it is his fault.
19. December I was asked to sign over my Water Permit over to Jim and Wendy, I refused to sign it over in an attempt to give me some power.
20. Jim bought a tractor to feed cows; I sold my tractor to pay the attorney.

December 2009-December 2011

From the time Jim Gord purchased his cow herd in December of 2009 until the Finstad eviction hearing in December of 2011, John took care of Jim's cattle and calved two calf crops without payment or wages from Jim, as Jim Gord had led the Finstads to believe they'd be able to buy back the farm after the three year period of the U.S. Forest Service-Grazing Association rule had expired. Gord was to cover all expenses for his cattle and John would cover the labor as a way of paying him back for his help on the loan for the farm. However, during this time period, the Finstads were also covering veterinarian costs, tractor repairs, and the electricity cost associated with the cattle waterers including the pumping of the water and heating of the pump house during the winter months. During the winter of 2010-2011, John expressed concern to Gord that the hay that was being delivered by Troy Goltz was of poor quality, which in turn fell on deaf ears. Some cows died of malnutrition while others began to abort their calves. Given the condition of the cattle, many of the cows did not breed back that next summer. By March of 2011, feed was no longer being delivered to the farm, and Jim was not returning John's phone messages. The Finstads were not in the financial position, nor was it their responsibility, to purchase feed for Gord's cattle. In the meantime, John was able to obtain some older hay and transportation for the feed from friends. Gord would not respond to John's calls until John contacted Gord's banker in Illinois. After that, John was able to procure some good hay for the cattle, some of which Gord has not paid for as of 2020. In December of 2011, three years after the deed was stolen, the time period by rule

of the Sheyenne Valley Grazing Association and the U.S. Forest Service had passed, and the Finstads wanted to pay off Gord. Rather than letting the Finstads pay him back as he had promised, Gord proceeded to evict them from the Finstad Family Farm. Later Jim Gord would testify at the eviction hearing of December 2011 that John did not properly take care of the cattle and was interfering with the farming and ranching operation. (See Scott and Al Johnson's Letter)

2010

1. May-November Troy Goltz custom farmed the land for Jim. John operated the pivots and took care of the cows in the pasture. The calf crop yielded 102%
2. In December the calves were sold. The market had gone up significantly, and Jim sold the calves for almost what he paid for the cows 9 months previously.
3. In the winter 2010-2011 there was a falling out between Troy Goltz and Gord.

2011

1. After the split between Troy Goltz and Jim, Troy quit delivering hay in March. Repeated attempts to contact Jim were ignored, and John finally had to call Jim Gord's banker to get ahold of Jim. (Documented)
2. Given the feed situation the cattle were weak, and they did not calf well.
3. John gave Gord Ron Rotenberger's name as someone who could custom farm the land in 2011.
4. On December 2, there was an eviction hearing in Ransom County Court. Jim Gord referred to Scott and Al Johnson's alleged interference by me in the farming operation. (See Scott and Al's letter setting the record straight. Jim perjured himself on the stand.)
5. At the eviction hearing the Finstads negotiated a deal to remain on the farm until February 1, 2012 so that they would have time to remove their personal property after 25 years on the farm. (The court could have given the Finstads a five day eviction notice.)
6. Ron Rotenberger's stepson wanted to ranch, so Ron and his stepson took over the cattle operation after the eviction hearing. There was another lie to the Grazing Association about the cattle. I will explain in person, but there was deceit and total disregard for the Grazing Association rules.
7. John heard that Ron had bought more cows to replace all of the cows that either died or were open, because of the lack of feed and the winter. How was it spending Jim's money for new cows, he stated "it was fun", I then asked him why if his stepson is buying the original herd from why did he not buy the cows himself, he referred to the agreement as a way to get around the Grazing Association rules.

2012

1. Summary of Judgement Motion in Ransom County Court in favor of Jim Gord.
 - A. The definition of Summary of Judgement Motion is that there are no questions of fact in a case before the Court. Was the Deed truly delivered, there were no depositions and testimony allowed by John Finstad or his support of their position.
2. My underground irrigation pipe was not drained and there was an underground break. Jim Gord went to K-T Irrigation and complained about hard times and refused to pay the whole bill. Sign of his character

3. I had heard that Ron had bought more cows to replace all of the cows that either died or were open, because of the lack of feed and the winter. How was it spending Jim's money for new cows, he stated "it was fun", I then asked him why if his Step son is buying the original herd from why did he not buy the cows himself, he referred to the agreement as a way to get around the Grazing Association rules.

2013

1. In the spring, Ron was still farming my land and I rode in the tractor with Ron and I asked why he was seeding alfalfa on my land. I told him that he was doing it for Jim. I asked him why? If his Step-son was buying the cows on a contract from Jim then it would be his responsibility to raise the feed. He stated that Jim still owed the cows but because of the Grazing Association rules they had to lie and the cows were still Jims and that the purchase contract was just a front to get around the rules.
2. In the June we were getting ready to go to court. There was plan to Depose many people who would have a direct bearing on the case. Frank Farrar could not be deposed because of a personal tragedy in his lawyer's family.

2014

1. Fall 2014 The Gord's still have possession of the Finstad farm.
2. Appealed the District Court decision to the North Dakota Supreme Court. The Court ruled that the Deed in Lieu severed all of our rights to our farm.
3. We received a phone call that our house and trailer were gone, I called Ron. We explained to Ron according to the Management Agreement, the Gord's recognized our ownership of our mobile home. A neighbor was going to get the trailer, but it was burned up before it was retrieved for our farm. We filed charges and nothing was done by Fallon Kelly or Tonya Duffy.
4. Despite repeated communication, Tonya Duffy did nothing until the statute of limitations had expired.

2015

1. Appeal the North Dakota Supreme Court and District Courts

2016

2017

2018

1. Reopened our Bankruptcy to gain the proper Jurisdiction for our case to be heard.

2019

1. In May we went before Judge Hastings. (There is a recording)

2020

1. Appeal to the 8th Circuit on the ruling of Judge Hastings ruling, to the 8th Circuit of appeals

Conclusion

I hope that I have provided enough information to bring out the failures of the legal system in our situation. There have been many things that the judges could have done to rule in our favor. I have pointed out there has been theft of a deed, Lying on the stand, opportunities for the Gord's to get paid off, and when that was not taken by the Gord's there was their assurances that they would work with us and the only thing that they desired was to get their money back, and then 30 days later they try to sell our farm to Brian for a fast \$500,000.00 profit. Our Confirmed plan is a contract that bound all of us together and there should be no one or anything that should have superseded our confirmed plan. In conversations with certain attorney's they have concluded that nothing precluded Beresford from doing what they did but it breached our contract with them, because the Settlement Agreement has been ruled null and void according to state law. To be consistent with the intent of a bankruptcy (To give a person a fresh start) there needs to be a law passed that gives assurances to both Debtors and Creditors that this situation will never happen again. Now it could be said that given this case, there will be a greater awareness of this type of interpretation between state law and Federal Bankruptcy law, but were does this leave John and Lorie Finstad? Given the deceit and conduct of Jim Gord and his attorneys and the way in which the laws between the two government agencies have not served the intent of the Bankruptcy Code, I am suggesting the following;

#1 Thought

1. That state law will be used as a guide to construct a mutual Bankruptcy plan.
2. That once a plan is signed by the court and the parties confirmed it is a contract.
3. That this contract will only be able to be changed, assigned or otherwise altered with the consent of all the parties and the consent of the Bankruptcy Judge.
4. That this law be deemed Retroactive to January 2005.
5. If you look at the reason for a Retroactive law, it is explained as "a way for a legislature to correct unforeseen consequences of a law or an interpretation of law that could be seen as unforeseen at the time of the passage of a law".

#2 Thought

1. When a Deed In Lieu is given it will be held in Escrow until there is an actual Foreclosure

In closing I want everyone to pay close attention to the Management Agreement that was prepared by Mike Nelson who was Jim Gord's attorney. Line 15 and I quote "This Agreement may not be amended except in writing, signed by all parties to this Agreement". Why can't this be a Bankruptcy Standard to protect all parties of a Confirmed Plan?

Table of Evidence

1. Letter to David Johnson from Brad Sinclair- Summary of the proposed Settlement Agreement- October 25, 2005
2. Letter to David Johnson from Brad Sinclair- Response to David Johnson's request for fee for Settlement Agreement- November 4, 2005
3. Quit Claim Deed with Anti-Merger Provision- December 30, 2005
4. Contract for Purchase- December 30, 2005
5. Memorandum for lease and Option to Purchase- January 10, 2006
6. Memorandum for lease and Option to Purchase- January 31, 2006
7. Communication from Frank Farrar to SVGA-August 3, 2006
8. Letter involving the Grazing Association and the Finstad Position- October 5, 2006
9. Don Eppler's letter to the Grazing Association- October 31, 2006
9. Communication between David L. Johnson and Mike Nelson-June 20, 2008
10. Communication to Warren Anderson from Brad Sinclair-August 8, 2008
11. Communication between David L. Johnson and the Gords attorney Jon Brakke-August 13, 2008
12. Communication between Brad Sinclair and Jon Brakke-October 9, 2008
13. Quit Claim Deed- November 28, 2008
14. Communication between Brad Sinclair and Jon Brakke- (An addition that was supposed with the QCD that was stolen) December 2, 2008)
This is the Assignment Agreement that Brad Sinclair Drafted and not signed by the Gords
15. Communication between Brad Sinclair and Jon Brakke- (Asking for the QCD back) December 2, 2008
16. Communication between Mike Nelson and Don Eppler and Brad Sinclair- (Trying to sell our property) January 28, 2009
17. Communication between Brad Sinclair and Jon Brakke- February 3, 2009
18. Release of Term Permit-November 23, 2009

19. Communication from Mike Nelson to Lyle Thompson, Contract promised but never presented- November 30, 2009
20. Promissory Note Jim and Wendy Gord to John and Lorie Finstad- December 2, 2009
21. Management Agreement between Jim and Wendy Gord and John Finstad- December 2, 2009
22. Communication between Jim and John- There are many E-mails keeping Jim informed about what was going on from December 2009 to the time of the eviction that could be available if needed.
23. Communication between Jim and John- March 17, 2011
24. Communication between Jim and John- April 8, 2011
25. Communication between Jim and John- June 15, 2011
26. Communication between Warren Anderson and Jim Gord- September 21, 2012
27. Communication between Don Olson (Dakota Plains Coop Manager)- March 20, 2013
28. Scott and Al Johnson's letter to the courts and others documenting the Finstad's contribution to the farm- July 25, 2013
29. Communication to Jim Gord from Warren Anderson recalling the promises made to the Finstads and his intentions about the Finstad Farm and being a man of his word- December 1, 2014
30. Communication between Wendy and Jim and Lorie Finstad, they never opened up the letter- February 16, 2015
31. Communication between Randy Panzer and Lorie Finstad- July 9, 2015
32. Binding Effect on Creditors and Debtors Publication- January 24, 2020
33. When state Law Conflicts with Federal Law- No date of publication
34. A full accounting of what the Finstad Farm would of rented for and the NDSU figures of Cow/Calf Profitability and the difference between Federal Pasture fees and Private NDSU pasture rent difference calculations.

Jack G. Marcell
 Ronald H. McLean
 Roger J. Minch
 Steven K. Aakre
 Maureen Holman
 Brad A. Sinclair
 Jane L. Dynes
 Beverley L. Adams
 Timothy G. Richard
 Joseph A. Welch, Jr.
 Berly D. Nelson
 Also Licensed in MN



Gary A. Rockne
 Office Manager

Retired:
 Armond G. Erickson
 Lowell W. Lundberg

Norman G. Tenneson
 (1898-1982)
 Chester J. Serkland
 (1909-1996)

October 25, 2005

Mr. David Johnson
 Attorney at Law
 P.O. Box 2189
 Fargo, ND 58108-2189

RE: Beresford Bancorporation, Inc. / Finstad Letter of Understanding Regarding Settlement

Dear Mr. Johnson:

This correspondence will briefly summarize the settlement agreement entered into between Beresford Bancorporation and Lorie and John Finstad. The purpose of this Agreement is to bind the parties to settlement. It is the parties intentions that my office prepare a detailed settlement agreement with supporting documentation and forward the same for all parties signatures. In the event that the detailed Settlement Agreement is not executed by any party, this Agreement shall control.

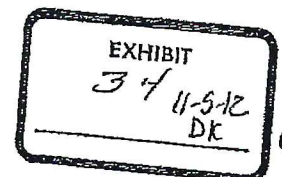
Lorie and John Finstad appeared at the Bankruptcy Court hearing on October 24, 2005, at 9:30 a.m., personally. Frank Farrar, a representative of Beresford Bancorporation, appeared telephonically. Frank Farrar and the Finstads listened to this Settlement Agreement being read into the record and consented to the same. The settlement is as follows:

1. The Finstads will execute and deliver to Beresford Bancorporation a deed in lieu foreclosure with anti-merger language to be recorded January 2, 2006;
2. If there be any judgments on the real estate, the Finstads will pay the same. In addition, the Finstads will pay the mortgage/claim of Equity Trust Company outstanding prior to December 1, 2005;

EXHIBIT "1"

Page 1 of 21

ATTORNEYS & COUNSELORS AT LAW A PROFESSIONAL CORPORATION
 10 Roberts Street • P.O. Box 6017 • Fargo, North Dakota 58108-6017
 Telephone (701) 232-8957 • Fax (701) 237-4049 • www.serklandlaw.com



0160

October 25, 2005

Page 2

3. In consideration of the receiving a deed in lieu of foreclosure, the Finstads will be granted an option to purchase the real estate from Beresford Bancorporation which shall expire the earlier of:
 - a. Finstads' failure to tender cash rent or perform other obligations pursuant to the cash rent agreement and/or option agreement and fail to cure the same; or
 - b. December 31, 2010.
4. Tender \$25,000.00 to Beresford Bancorporation from the cattle proceeds check on or before November 30, 2005. The cattle proceeds check in the amount in excess of \$50,000.00 has various individuals or entities names on the check;
5. The option to purchase the real estate will require an March 15, 2006, payment in the amount of \$6,000.00 to keep the option in effect yearly and a like payment each and every March 15th thereafter up to and including March 15, 2010. Upon the Finstads providing notice of exercising their option to purchase the real estate, the Finstads will have 90 days to close the purchase of the real estate;
6. Enter into a standard cash rent agreement requiring cash rent payment in the amount of 8% of Beresford Bancorporation's investment in the real estate. The investment is defined as the total amount due and owing by the Finstads to Beresford Bancorporation less the \$25,000.00 payment less all option to purchase payments received (in the amount of \$6,000.00) x 8%;
7. The rent payment is due and payable on or before March 15th of every year during the term of the lease. The lease will be a 5-year lease expiring December 31, 2010, and non-renewable;
8. If there is a default of a lease payment or the option payment, the Finstads will be provided a 15 day notice of default with the 15 days period of time commencing upon the date of the mailing of the notice of default. Beresford Bancorporation must receive all funds that are in default before the 15 day period expires. All other defaults must also be cured in 15 days;
9. The deed in lieu of foreclosure includes the conveyance of all irrigation systems upon the property. The Finstads will prepare a map demonstrating the location of the irrigation system. The irrigation systems will be inspected by a recognized irrigation sales and maintenance company during the period of time October 1 through October 15 of each and every year during the term of the agreement. The irrigation company shall render a report before October 30 of each year during the term of this agreement and by December 30 during each term of this agreement the repairs recommended by the irrigation company must be performed. If not, such shall constitute a default. The Finstads have agreed to pay for all of the repairs recommended by irrigation company. The repairs are based upon obsolescence, wear and tear and damage by whatever sources including vandalism, acts of God, and equipment movement;

EXIBITI "1"
Page 2 of 21

October 26, 2005

Page 3

10. The Finstads have agreed to pay all real estate taxes and special assessments on or before March 1st of every year during the term of this agreement and before any interest is assessed on the taxes. As to the taxes outstanding for the years 2003 and 2004, the Finstads shall pay the same by December 1, 2005, so that Farrar may record his deed in this matter;
11. The Finstads must procure insurance on all improvements to the real estate disclosing Beresford Bancorporation as a loss/payee. Farrar will consent to all insurance proceeds being utilized for repair or replacement of damaged property on the real estate as long as the Finstads pay for any shortfall (the difference between the cost to repair and the insurance proceeds for all property damaged and covered by insurance that the Finstads request to be repaired);
12. The Finstads will make and pay for all necessary repairs and perform maintenance necessary to maintain the real estate and all buildings and fixtures in its present condition.
13. Beresford Bancorporation will not record the deed in lieu of foreclosure until January 2, 2006. At the time of filing of the deed in lieu of foreclosure, all 2003, 2004 and present, 2005 real estate taxes must be paid to the Ransom County Recorder's office. From the date of this Agreement until January 1, 2006, the Finstads are granted the privilege of paying off their entire indebtedness outstanding to Beresford Bancorporation as of the date of tendering said funds less a discount calculated to be the difference between the amount outstanding as of the time of the payment to Beresford Bancorporation less \$390,000.00 divided by 2 without taking into consideration the \$25,000.00 payment (to be tendered by the Finstads to Farrar on or before November 30, 2005);
14. In consideration of the foregoing, Beresford Bancorporation agrees to release its interest in the cattle check (as long as it receives \$25,000.00 from the cattle check), and agrees to release its security interest/financing statement in the Finstads' personal property excluding irrigation systems. The Finstads have also agreed to execute a fixture financing statement verifying that Beresford Bancorporation has an interest in the irrigation system and all buildings upon the real estate.
15. In further consideration and the terms and conditions of this settlement agreement, Beresford Bancorporation agrees that upon the Finstads' failure to timely pay any rent, option fee, or fails to cure any other default of their agreements with Beresford Bancorporation resulting in the Finstads' termination of any interest in the real estate, Beresford Bancorporation agrees to conduct an auction sale of the real estate within 6 months of the date determined to be the last day that the Finstads have any interest in the real estate. Beresford Bancorporation is entitled to credit bid the amount of its investment in the real estate outstanding at the auction sale and retain all proceeds received from the auction sale. The real estate will not be sold for an amount less than total amount of Beresford Bancorporation's outstanding. The real estate will be sold by the auctioneer taking four bids and the

October 25, 2005

Page 4

real estate being sold based upon the highest bid in excess of the amount outstanding to Beresford;

- a. The sale of 20 acre farmstead;
 - b. Sale of each quarter being sold separately; and
 - c. All of the real estate sold as one unit.
16. Upon the termination of the Finstads' interest in the real estate by their failure to cure any default regarding the agreements referred to herewithin, the Finstads may remain on the farmstead as long as they do not interfere with the Beresford Bancorporation and its assignees using the remaining farmland for the price of \$500.00 per month payable the 1st day of each month until 30 days after the auction sale. The Finstads have agreed not to interfere with auction sale or interfere with Beresford Bancorporation's use of the real estate once the Finstads no longer have an interest in the real estate and until 30 days after the auction sale. Should the Finstads violate this provision, the Finstads may be immediately evicted from the real estate;
17. The Finstads have agreed that they will consent to an entry of judgment of foreclosure and not object to Beresford Bancorporation's continuation of any state real estate foreclosure proceedings in order for Beresford Bancorporation to clear title to the real estate. If the Finstads have performed the terms and conditions of this Settlement Agreement in a timely fashion, Beresford Bancorporation will release the Finstads of any personal obligations on their obligations outstanding to Beresford Bancorporation; however, the parties stipulate and agree that in order to continue the foreclosure proceedings to clear title, the debt will still be a valid and enforceable debt upon the real estate.
18. At the time of the Finstads filing for bankruptcy relief, certain farm equipment and machinery of the Finstads was self help reposed by Beresford Bancorporation. The equipment is located at a Steffes farm. The Finstads have agreed to pay Steffes his storage charges and costs involved with seizing the same and storing the same.
19. If Beresford Bancorporation is required to issue a 1099 to the Finstads, the amount of the 1099 will be for the amount of the Finstads' indebtedness outstanding to Beresford Bancorporation and not the value of the real estate.
20. If the Finstads fail to pay the mortgage/claim of Equity Trust Company prior to December 1, 2005, (paragraph 2), or fail to tender \$25,000.00 to Beresford Bancorporation before November 30, 2005, (paragraph 4), or pay the 2003 and 2004 real estate taxes due and owing the Ransom County Treasurer's office by December 1, 2005, (paragraph 10), or and pay 2005 real estate taxes by January 1, 2006, Beresford Bancorporation may consider this agreement in default, record the deed in lieu of foreclosure, provide the Finstads with 15 days notice to cure all defaults and if they fail to do so, all of the Finstads' interests in the real estate will be terminated including any option to purchase the real estate and/or cash rent the

October 25, 2005

Page 5

same, and Beresford Bancorporation may pursue the Finstads for any conversion of collateral/criminal proceedings. This Agreement shall not be construed as an admission by any party that the Finstads have been involved in any conversion of collateral, but this Agreement simply allows Beresford Bancorporation to investigate and pursue the same if such facts and circumstances exist.

21. In the event that the Finstads sell any Beresford Bancorporation's collateral from the date of this Agreement until January 2, 2006, Beresford Bancorporation's name should appear on said check and Beresford Bancorporation should be provided with a copy of said check evidencing the proceeds received from the sale thereof.
22. On or about October 31, 2005, Beresford Bancorporation will provide the Finstads with a detailed list of all attorney's fees incurred to date, any accounting as to the Finstads entire obligations outstanding to Beresford Bancorporation.
23. Beresford Corporation's motion for relief from stay, motion for dismissal of the Finstads' Chapter 12 Proceedings, and Motion to Require the Finstads to Deposit all Cattle Proceeds will be continued until the Settlement Agreement and related documents are executed by the parties.

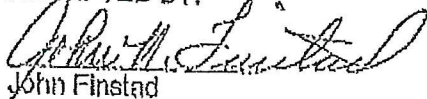
Yours very truly,

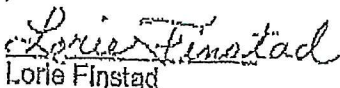
SERKLAND LAW FIRM


Brad A. Sinclair

BAS/slm

ACCEPTED BY:


John Finstad


Lorie Finstad


Frank Farrar, President of Beresford Bancorporation

Jack G. Marcil
Ronald H. McLean
Roger J. Minch
Steven K. Aakre
Maureen Holman
Brad A. Sinclair
Jane L. Dynes
Beverley L. Adams
Timothy G. Richard
Joseph A. Wetch, Jr.
Berly D. Nelson

Also Licensed in MN



SERKLAND

LAW FIRM

SINCE 1888

Gary A. Rockne
Office Manager

Retired:
Armond G. Erickson
Lowell W. Lundberg

Norman G. Tenneson
(1898-1982)
Chester J. Serkland
(1909-1996)

November 4, 2005

Mr. David Johnson
Attorney at Law
P.O. Box 2189
Fargo, ND 58108-2189

RE: Beresford Bancorporation, Inc. / John Finstad, Lorie Finstad

Dear Mr. Johnson:

You requested information regarding my attorney's fees I have spent to date regarding the Finstad matter. Enclosed please find a general summary of the attorney's fees spent to date. Until the Settlement Agreement is signed, I am fearful of providing a detailed explanation of my services performed due to issues relating to attorney/client confidentiality and the waiving of the same.

Yours very truly,

SERKLAND LAW FIRM

Brad A. Sinclair

BAS/kmd
Enclosure
Cc: Frank Farrar

OFFICE OF COUNTY RECORDER
State of North Dakota)
County of Ransom)

I hereby certify that the within instrument was filed in this
office for record on 01/20/2006 at 10:30 AM, and was duly
recorded as Document Number 164056

54056 Fee: \$16.00 Pg 1 of 3
(ite of North Dakota)
County of Ransom)
Recorded: 01/20/2006 At 10:30 AM
Susan J. Froemke, Recorder By
Return to: SERKLAND LAW FIRM, 10 ROBERTS ST.,
PO BOX 6017, FARGO ND 58108-6017

Susan J. Froemke Recorder
By _____ Deputy
Fee: \$16.00 SERKLAND LAW FIRM 10 ROBERTS ST.
PO BOX 6017 FARGO ND 58108-6017

QUIT CLAIM DEED WITH ANTI-MERGER PROVISION

THIS QUIT CLAIM DEED WITH ANTI-MERGER PROVISION INDENTURE, Made
this 30th day of December, 2005, between John Finstad and Lorie Finstad, husband and
wife, grantors, whether one or more, and Beresford Bancorporation, Inc., a corporation
organized under the laws of the State of South Dakota, grantee, whose post office
address is 724 Main, P.O. Box 919, Britton, South Dakota 57430.

For and in consideration of the sum of One Dollar and other good and valuable
consideration, grantors do hereby QUIT CLAIM WITH ANTI-MERGER PROVISION to
grantee, all of the following real property lying and being in the County of Ransom and
State of North Dakota and described as follows, to-wit:

The East ½ of Section 9, Township 134, Range 54, Ransom County North
Dakota.

AND

The South ½ of the NW ¼ of Section 15, Township 134, Range 54,
Ransom County, North Dakota.

This conveyance is not intended to merge the title conveyed by the Grantors to the
Grantee hereunder with the Grantee's mortgage liens held by the Grantee, and the

mortgage liens, will remain in full force and effect to protect and preserve the Grantee's liens, in the event of the existence of inferior liens or encumbrances, and said mortgage liens, shall remain in full force and effect until and unless satisfied through foreclosure or satisfied in writing and recorded by the Grantee including:

A mortgage executed by the Grantors in favor of Beresford Bancorporation, Inc., dated June 13, 2003 and recorded on June 18, 2003 at 10:30 A.M. as document number 159760 in the office of the Ransom County Recorder.

A mortgage executed by the Grantors in favor of Beresford Bancorporation, Inc., dated March 20, 2004 and recorded on March 25, 2004 at 9:00 A.M. as document number 161225 in the office of the Ransom County Recorder.

A mortgage executed by the Grantors in favor of Beresford Bancorporation, Inc., dated June 18, 2004 and recorded on July 1, 2004 at 11:54 A.M. as document number 161771 in the office of the Ransom County Recorder.

A mortgage executed by the Grantors in favor of Beresford Bancorporation, Inc., dated June 18, 2004 and recorded on July 1, 2004 at 11:56 A.M. as document number 161772 in the office of the Ransom County Recorder.

This conveyance by the Grantors to Grantee includes all of Grantors' rights, title and interest in and to the real estate, together with any improvements thereon, all dower and homestead rights, all rights of possession, and rental and equity of redemption and all rights of first refusal.

I certify that the requirement for a report of the full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision (i) of Subsection 6 of Section 11-18-02.2 N.D.C.C. as amended.

Date: 11/16/06 Signed: *Bea L. Lindan*
Grantee or Agent

164056 Fee: \$16.00 Pg 2 of 3
State of North Dakota)
County of Ransom)
Recorded: 01/20/2006 At 10:30 AM
Susan J. Frohmke, Recorder By _____
Return to: SERKLAND LAW FIRM, 10 ROBERTS ST.,
PO BOX 6017, FARGO ND 58108-6017

Delinquent taxes and special assessments or installments of special assessments paid and TRANSFER ENTERED this 30 day of November 2006
Corrine Gilbert
RANSOM COUNTY AUDITOR
By *Larry J. Schmitt*
County Deputy, Ransom County Auditor
Current taxes or current special assessments or installments of special assessments are unpaid in the amount of \$ _____

WITNESS, The hand of the Grantor:

John N Finstad
John Finstad

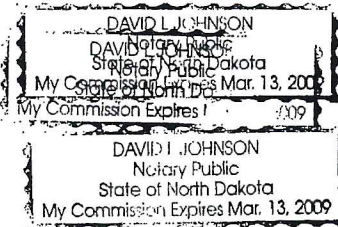
Lorie Finstad
Lorie Finstad

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

On this 30th day of December, 2005, before me personally appeared JOHN FINSTAND AND LORIE FINSTAD, known to me to be the person(s) who are described in, and who executed the within and foregoing instrument, and severally acknowledged that they executed the same.

David L Johnson
Notary Public
CASS County, North Dakota
My Commission Expires:

This instrument was drafted by:
\$16.00 pd. - OK # 75798
Brad A. Sinclair # 04225
SERKLAND LAW FIRM
10 Roberts St.
P.O. Box 6017
Fargo, ND 58108-6017
(701) 232-8957



164056 Fee: \$16.00 Pg 3 of 3
State of North Dakota)
County of Ransom)
Recorded: 01/20/2006 At 10:30 AM
Susan J. Froemke, Recorder By
Return to: SERKLAND LAW FIRM, 10 ROBERTS ST.,
PO BOX 6017, FARGO ND 58108-6017

CONTRACT FOR PURCHASE

THIS AGREEMENT, made as of December 30, 2005, by and between Beresford Bancorporation, Inc., (Seller), and John Finstad and Loric Finstad, husband and wife, (Purchaser), whose post office address is 14060 Hwy. 27, Lisbon, ND 58054.

WITNESSETH, That the Seller, in consideration of that certain Settlement Agreement and Release dated January 10, 2006, hereby sells and agrees to convey unto Purchaser, as joint tenants and not as tenants in common, by a Warranty Deed, accompanied by an abstract evidencing good title in Seller at the date hereof, upon the prompt and full performance by Purchaser of this agreement, the tract of land lying and being in the County of Ransom and State of North Dakota, described as follows, to-wit:

The East Half (E½) of Section Nine (9), Township One Hundred Thirty-four (134),
Range Fifty-four (54)

AND

The South Half of the Northwest Quarter (S½NW¼) of Section Fifteen (15), Township One
Hundred Thirty-four (134), Range Fifty-four (54).

The legal description was obtained from a previously recorded instrument.

And Purchaser, in consideration, hereby agrees to pay Seller in accordance with the terms and conditions of the Option to Purchase Real Estate and Lease entered into between the parties on December 30, 2005.

Purchaser further covenants and agrees as follows: to pay, before penalty attaches thereto, all taxes due and payable in the year 2005, and in subsequent years, and all special assessments heretofore or hereafter levied upon said premises; also that any building and improvements now on said land, or which shall hereafter be erected, placed or made thereon, shall not be removed therefrom, but shall be and remain the property of the Seller until this contract shall be fully performed by the Purchaser; and at Purchaser's own expense, the buildings on said premises shall at all times be insured in some reliable insurance company or companies, to be approved by the Seller, against loss by fire, wind-storm, hail, and extended coverages for full insurable value, payable to Seller, and in case of loss, should there be any surplus over and above the amount then owing Seller, the balance shall be paid over to the Purchaser as Purchaser's interest shall appear, and to deposit with Seller policies of said insurance; and, in addition, at Purchaser's own expense, keep the buildings and said premises in good

and proper repair. Should the Purchaser fail to pay any item to be paid by Purchaser, including maintenance and other expenditures to keep the property in good and proper repair and utility charges current, the same may be paid by Seller and shall be forthwith payable, with interest thereon at the rate provided under this contract, as an additional amount due Seller under this contract. Purchaser shall allow no waste on or of the premises nor allow or make any lien to attach to the premises.

No assignment or transfer of Purchaser's interest hereunder shall be made without written consent of Seller, it being expressly understood that the personal credit and character of the Purchaser is a primary consideration under this contract.

Purchaser does hereby assign, set over and deliver to Seller all of Purchaser's right, title and interest in and to the rents, issues and profits of the premises and does hereby assign and set over all leases, whether oral or written, now existing or hereafter made and empowers Seller to collect the rents as they shall become due and to receipt for the same, and directs each of the tenants to pay such rents as may now be due or which may hereafter become due to Seller during the term of this agreement. Purchaser appoints Seller the Purchaser's true and lawful attorney to renew any and all leases or make new leases or agreements in regard to such property as Seller shall think proper from time to time.

PROVIDED, HOWEVER, this assignment shall not become effective unless default shall be made in the covenants, terms and conditions of this agreement on the part of the Purchaser.

But should default be made in the payment of principal and interest due hereunder, or of any part hereof, or should Purchaser fail to pay taxes or assessments upon said land, premiums upon said insurance, or to perform any of the covenants, agreements, terms or conditions herein contained to be by Purchaser kept or performed, the Seller, may, at Seller's option, by written notice declare this contract cancelled and terminated, and all rights, title and interest acquired thereunder by Purchaser, shall thereupon cease and terminate, and all improvements made upon the premises, and all payments made hereunder shall belong to Seller as liquidated damages for breach of this contract by Purchaser, such notice to be in accordance with the statute in such case made and provided. Neither the extension of time of payment of any sum of money to be paid hereunder, nor any waiver by the Seller of the right to declare this contract forfeited by reason of any breach thereof, shall in any manner affect the right of Seller to cancel this contract because of defaults subsequently maturing, and no extension of time shall be valid unless evidenced by duly signed instrument. Further, after service of notice and failure to remove, within the period allowed by law, the default therein specified, Purchaser hereby specifically agrees, upon demand of Seller, quietly and peaceably to surrender possession of said premises, and every part thereof, it being understood that until such default, Purchaser is to have possession of said premises. Alternate legal remedies, including court action for cancellation or specific performance, are available at the option of Seller.

IT IS MUTUALLY AGREED, By and between the parties hereto, that the time of payment shall be an essential part of this contract, and that all the covenants and agreements herein contained shall

extend, run with the land, and bind the heirs, personal representatives, successors, or assigns of the respective parties hereto.

IN TESTIMONY WHEREOF, The parties hereto have executed this agreement the day and year next to their signature.

Dated this 9th day of October 2006
~~December, 2005.~~

BERESFORD BANCORPORATION, INC.

BY: [Signature]
ITS: [Signature]

Dated this 9th day of October 2006
~~December, 2005.~~

[Signature]
John Finstad

Dated this 9th day of December, 2005.

[Signature]
Lorie Finstad

a:\88299\Contract for Deed

LYLE P THOMASON
Notary Public
State of North Dakota
My Commission Expires Aug. 23, 2008

notarized October 9, 2006
[Signature]

MEMORANDUM OF LEASE AND OPTION TO PURCHASE

THIS MEMORANDUM OF LEASE AND OPTION TO PURCHASE is entered into and made as of January 10th, 2006, by and between Beresford Bancorporation, Inc., 600 Main Street, P. O. Box 1029, Briton, South Dakota 57430, hereinafter referred to as "Beresford" and John Finstad and Lorie Finstad, 14060 Hwy. 27, Lisbon, North Dakota 58054, hereinafter referred to as "Finstads".

Beresford is the owner in fee simple of certain real estate, hereinafter referred to as the "Real Estate", located in Ransom County, North Dakota, and more particularly described as follows:

~~The East Half of Section 9, Township 134, Range 54, Ransom County, North Dakota;~~

The South Half of the Northwest Quarter of Section 15, Township 134, Range 54, Ransom County, North Dakota.

Pursuant to a Settlement Agreement entered into between the parties, the Finstads have been granted an Option to Purchase the Real Estate and to lease the real estate until December 31, 2010, unless terminated earlier as provided in the Option to Purchase or Lease or by operation of law.

The sole purpose of this Memorandum is to provide Notice of the Option to Purchase and Lease and the length of its term.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Lease and Option to Purchase to be executed the day and year first written above.

BERESFORD BANCORPORATION, INC.

By:

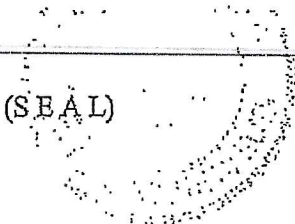
Frank Farrar, President
FRANK FARRAR, PRESIDENT

JOHN FINSTAD

LORIE FINSTAD

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF MARSHALL)

On this 10th day of January, 2006, before me personally appeared Frank Farrar, of Beresford Bancorporation, Inc., known to me to be the person who is described in and who executed the within and foregoing instrument on behalf of the corporation and acknowledged that he had authority to do so.



Brenda Hoglund
NOTARY PUBLIC
Marshall County, South Dakota
My commission expires:

STATE OF NORTH DAKOTA)
)ss
COUNTY OF RANSOM)

On this _____ day of January, 2006, before me personally appeared John Finstad and Lorie Finstad, known to me to the persons who are described in and who executed the within and foregoing instrument and severally acknowledged they executed the same.

(S E A L)

NOTARY PUBLIC
Ransom County, North Dakota
My commission expires:

G:\25299\Memorandum of Lease and Option to Purchase.wpd

MEMORANDUM OF LEASE AND OPTION TO PURCHASE

THIS MEMORANDUM OF LEASE AND OPTION TO PURCHASE is entered into and made as of January 31, 2006, by and between Beresford Bancorporation, Inc., 600 Main Street, P. O. Box 1029, Briton, South Dakota 57430, hereinafter referred to as "Beresford" and John Finstad and Lorie Finstad, 14060 Hwy. 27, Lisbon, North Dakota 58054, hereinafter referred to as "Finstads".

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The South Half of the Northwest Quarter of Section 15, Township 134, Range 54, Ransom County, North Dakota.

Pursuant to a Settlement Agreement entered into between the parties, the Finstads have been granted an Option to Purchase the Real Estate and to lease the real estate until December 31, 2010, unless terminated earlier as provided in the Option to Purchase or Lease or by operation of law.

The sole purpose of this Memorandum is to provide Notice of the Option to Purchase and Lease and the length of its term.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Lease and Option to Purchase to be executed the day and year first written above.

BERESFORD BANCORPORATION, INC.

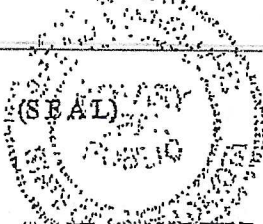
By: Frank Farrar
FRANK FARRAR, PRESIDENT

JOHN FINSTAD

LORIE FINSTAD

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF MARSHALL)

On this 3rd day of January, 2006, before me personally appeared Frank Farrar, of Beresford Bancorporation, Inc., known to me to be the person who is described in and who executed the within and foregoing instrument on behalf of the corporation and acknowledged that he had authority to do so.



Brenda Hoglund
NOTARY PUBLIC
Marshall County, South Dakota
My commission expires: 12-7-2010

STATE OF NORTH DAKOTA)
)ss
COUNTY OF RANSOM)

On this _____ day of January, 2006, before me personally appeared John Finstad and Lorie Finstad, known to me to be the persons who are described in and who executed the within and foregoing instrument and severally acknowledged they executed the same.

(S E A L)

NOTARY PUBLIC
Ransom County, North Dakota
My commission expires:

G:\25299\Memorandum of Lease and Option to Purchase.wpd

FRANK L. FARRAR

Attorney at Law

600 MAIN STREET
PO BOX 1029
BRITTON, SOUTH DAKOTA 57430
TELEPHONE (605) 448-2643

August 3, 2006

Sheyenne Valley Grazing Association
P.O. Box 63
McLeod, ND 58057

Dear Grazing Association:

Please be advised that Beresford Bancorporation, a bank holding company, loaned money to John Finstad. John Finstad took bankruptcy and in the bankruptcy agreement, Beresford Bancorporation took the title to the land with an option back to Mr. Finstad that he has a right to exercise. The transfer of the property was basically for the purpose of collateralizing the property in the event that Mr. Finstad does not exercise the option. Mr. Finstad also has the leasing right to the land and will continue to do so until he violates any of the above agreements.

Therefore it is my belief that this is not a change of ownership, but a financing vehicle to protect the company from long foreclosures in the event that Mr. Finstad does not meet his obligations.

Therefore I do not believe that there has been a change of ownership as you allege and you might possibly be violating Mr. Finstad's rights if you suspend on this basis.

You may have some other basis to do so, but this might not be the right one legally. I would suggest that you contact your legal and banking associates before you make this decision.

Please advise if you need any further information and what your intentions are. Thank you for your consideration.

Most Sincerely,

Frank L. Farrar
Frank L. Farrar

FLF/bjh

*If Finstad does not exercise his rights, the land will be sold at public auction and you will have your change of control
a non-farm corporation is not allowed to own land in N. Dak., S. Dak and Minnesota.*

EXHIBIT 2

Jack G. Marcil
Ronald H. McLean
Roger J. Minch
Maureen Holman
Brad A. Sinclair
Jane L. Dynes
Beverly L. Adams
Timothy G. Richard
Joseph A. Wetch, Jr.
Berly D. Nelson

Also Licensed in MN.



Gary A. Rockne
Office Manager

Retired:
Armond G. Erickson
Lowell W. Lundberg

Norman G. Tenneson
(1898-1982)
Chester J. Serkland
(1909-1996)

October 5, 2006



Mr. David Johnson
Attorney at Law
P.O. Box 2189
Fargo, ND 58108-2189

RE: Beresford Bancorporation, Inc. / John Finstad, Lorie Finstad

Dear Mr. Johnson:

Pursuant to our numerous conversations, the Finstads are fighting the Cattle Association's attempt to strip the Finstads of their grazing rights to the various Government property. The Grazing Association contends that the Finstads are not the owners of the real estate and the grazing rights transfer to the owner. In this case, if Beresford Bancorporation is the owner of the real estate, the grazing rights may be lost.

FSA has also informed John Finstad that he incorrectly filled out FSA documentation demonstrating that he is the owner of the real estate, not a tenant. Supposedly, as an owner of the real estate and actively farming the real estate, the owner is entitled to more FSA benefits than a tenant.

Pursuant to our conversations, John Finstad has represented that Clayton Ruck has agreed to finance Finstad's purchase to the real estate from Beresford Bancorporation and a closing will occur in November, 2006. Finstad's option to purchase the real estate without paying a subsequent renewal fee expires March 14, 2007. The option to purchase further provides that Closing is to occur within 90 days after the date of the Finstads' notice of their exercise of their option to purchase the real estate. Paragraph 2.15 provides that if the Finstads fail to exercise their option to purchase after providing notice to Beresford Bancorporation, all of the Finstads options to purchase the real estate shall be deemed forfeited.

You are hereby notified that should John Finstad provide Beresford Bancorporation with a notice of his intention to exercise his option to purchase the deeded real estate and should closing not occur, by no fault of Beresford Bancorporation by December 31, 2006, Beresford Bancorporation waives any forfeiture provision contained in the option to purchase the real estate and Finstads' option to purchase the real estate shall remain in

ATTORNEYS & COUNSELORS AT LAW • A PROFESSIONAL CORPORATION
10 Roberts Street • P.O. Box 6017 • Fargo, North Dakota 58106
Telephone (701) 232-8957 • Fax (701) 237-4049 • www.serklandlaw.com

Complaint Exhibit "D"

0412

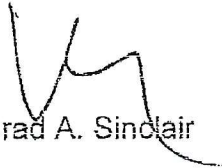
October 5, 2006

Page 2

full force and effect until March 14, 2007. On or before March 15, 2007, and should the Finstads have not purchased the property from Beresford Bancorporation, the Finstads must tender to Beresford Bancorporation and Beresford Bancorporation must receive by March 15, 2007, \$6,000.00 to extend the option to purchase the real estate from March 15, 2007, to March 15, 2008.

Yours very truly,

SERKLAND LAW FIRM



Brad A. Sinclair

BAS/slm

Cc: Frank Farrar

The representations and statements contained in this correspondence have been agreed to by Frank Farrar, the president of Beresford Bancorporation.

BERESFORD BANCORPORATION

By: Frank Farrar
Its: President



LAW OFFICES OF

EPPLER & LEADBETTER

TITLE BUILDING
LISBON, N. DAK. 58054-0511

P.O. BOX 511
TELEPHONE: (701) 683-4137
FAX: 701-683-5511

DON B. EPPLER
JEFFREY K. LEADBETTER

October 31, 2006

Sheyenne Valley Grazing Association
P.O. Box 63
McLeod, ND 58057

ATTN: Janna Leedahh

Dear Janna:

~~At your request, I am providing a written opinion concerning the issue of John Finstad's grazing rights.~~

1. Timeline of Events. A Settlement Agreement and Release was executed by the Finstads and Beresford Bancorporation on January 10, 2006. This document spells out the full agreement between the parties, and provides for the deed in lieu of foreclosure to the Bank. Although the deed was signed on 12/30/05, it was evidently not delivered until the Settlement Agreement was signed, as it was not recorded until 1/20/06. The Agreement provides that the Finstads are to retain full control of the land despite the deed, as they retained the right to rent the land themselves or to sublet it. The Finstads were also given an "Option" to repurchase the land, but the option price is the same as the indebtedness to the Bank, plus interest and legal fees. It is my opinion that the Settlement Agreement evidences that the Finstads retained control of their land at all times.

2. Ownership. At first glance, it would appear that the Finstads did transfer ownership of their land, as they signed a Quit Claim Deed which was recorded, and they have an Option to repurchase the land. After reviewing the Settlement Agreement and discussing it with Attorney Brad Sinclair, who drafted it for the Bank, it is my opinion that ownership did not actually transfer, as the Quit Claim Deed is merely protection for the Bank in the event the Finstads default on the terms of the Agreement. The Agreement provides for rental and option payments by the Finstads, but these payments are to be applied against his indebtedness rather than treated as rent. Interest continues to accrue on his full indebtedness at 8%, which indicates that the Bank gave the Finstads nothing for the Quit Claim Deed. Finally, if the Finstads default on the terms of the Agreement, the Bank cannot sell the property to whomever it

Complaint Exhibit "B"

Sheyenne Valley Grazing Association
October 31, 2006
Page Two

wishes, as it could if it really owned the land. The Bank must sell the land at public auction, the Finstads have control over how it is sold, and all proceeds in excess of the indebtedness owing to the Bank are to be paid over to the Finstads. Therefore, because the Bank did not receive any rights of ownership, or pay anything for the Quit Claim Deed, it is my opinion that ownership has not actually transferred from the Finstads to the Bank.

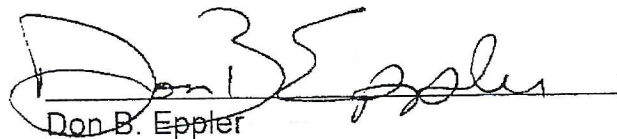
3. Management. Since the Finstads did not relinquish control or transfer ownership of their property, I do not believe that they violated the Rules of Management as set out in the Agreement between SVGA and USDA Forest Service.

4. Vehicle For Financing. It is my opinion that the Quit Claim Deed to the Bank is merely an additional form of protection for the Bank, and not an actual transfer of ownership. In that regard, it could be viewed as a vehicle for financing, or financial protection. For example, if the Finstads decided to convert their bankruptcy from a Chapter 12 to a Chapter 7, the Bank would not have to deal with a Bankruptcy Trustee or wait for a Court Order to sell the land, as it already has the Quit Claim Deed and Settlement Agreement. The Bank's attorney, who drafted these documents, states that he did not intend ownership to change, but this was his new and inventive way to best protect the Bank (and ensure that it would be paid in full).

I believe that this letter addresses all of the Board's questions. Lyle Thomason has requested a copy of this letter, which I will provide after the Board reviews it and consents.

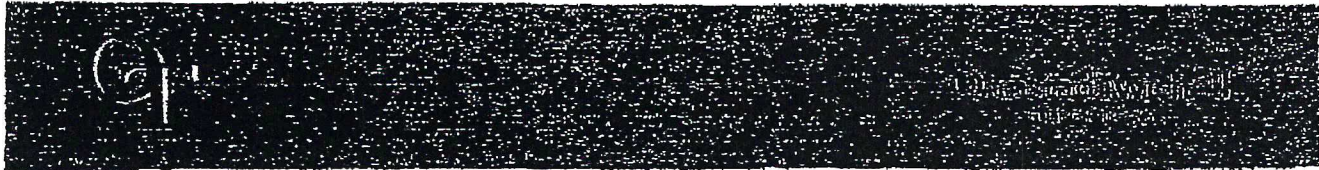
Very truly yours,

EPPLER & LEADBETTER



Don B. Eppler

DBE:vnh



Your life. Your law firm.

File for David

June 20, 2008

Marned R. Ohvstad 1914 - 1987

- Duane R. Breiding*
- Brett A. Bruckvik*
- William J. Bruckvik*
- John R. Dostaret*, Of Counsel
- SWAN L. Elson*
- Sean M. Fredrick*
- Elin A. Madsen Haug*
- Robert G. Hoy*
- John A. Juelson
- Ross V. Keller*
- Marshall W. McCullough
- Christopher M. McShane*
- Michael D. Nelson*
- Brian D. Neugebauer*
- Robert E. Rosenfeld*
- John T. Shoddy*
- Sara K. Swanson*
- David R. Twichell, Retired
- S. Lee Virje
- David L. Wenner

Peggy J. Buchholz, PLS
Office Administrator

*Also licensed in Minnesota

SENT VIA E-MAIL (david.johnson@mfcfargo.com) and FAX ONLY--
FAX #241-9107

Mr. David L. Johnson
Attorney at Law
P.O. Box 2189
Fargo, ND 58108-2189

Re: John & Lorie Finstad

Dear Mr. Johnson:

As I mentioned when we spoke by telephone, I represent Jim and Wendy Gord. The Finstads are indebted to Mr. and Mrs. Gord on two (2) debts, one being a mortgage debt of \$350,000⁺, secured by two parcels of farmland (although record title is held in Mr. Farrar's company), and the second being a debt of \$150,000⁺, which may be unsecured. Both debts involve loans made to John and Lorie Finstad after they filed for Chapter 12 bankruptcy protection, and both loans were made to John and Lorie Finstad without any disclosure to Jim and Wendy Gord that the Finstads were in bankruptcy. (The Gord's were not even informed that the Finstads did not have record ownership of the land.)

It appears that Judge Hill was not made aware that the Gord loans were made to the Finstads after the Chapter 12 bankruptcy filing, nor is the Bankruptcy Court aware of those loans today. What that omission may mean in the context of a Chapter 12 bankruptcy proceeding, I do not know. A bankruptcy lawyer will have to be consulted by the Gord's to answer that question, and find out what can or should be done about it. I thought that debtors in a bankruptcy reorganization proceeding had to get the Bankruptcy Court's permission to borrow money and pledge assets, but as I mentioned, I am not a bankruptcy lawyer.

If my information is correct, John and Lorie Finstad have now convinced another private party (the Clemensons) to loan them money, offering up as security a second mortgage position (second to the Gord's) on the two parcels of farmland referenced above. It appears the Finstads' intent is to (1) pay Frank Farrar's company \$51,000⁺, (2) keep (i.e., the Finstads keep) part of the proceeds for their own use, and (3) pay the Gord's \$125,000⁺. I am guessing the Clemenson loan is in the \$200,000 range, but that is only a guess.

2008

EXHIBIT
DK
10/12 3

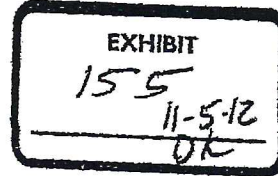
Jack G. Marcell
Ronald H. McLean
Roger J. Minch
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Jane L. Dynes
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Joseph A. Wetch, Jr.
Berly D. Nelson
Nicholas D. Thornton
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Gary A. Rockne
Office Manager

Retired:
Armond G. Erickson
Lowell W. Lundberg

Norman G. Tenneson
(1898-1982)
Chester J. Serkland
(1909-1996)



August 8, 2008

FAX - 320-589-4154

Mr. Warren Anderson
Attorney at Law
P.O. Box 527
Morris, MN 56267

RE: Farrar / John Finstad

Dear Mr. Anderson:

Pursuant to my telephone conference with John Finstad, he has requested that I fax to you the following documents:

1. Settlement Agreement entered into between Beresford Bancorporation and John Finstad;
2. Information regarding payoff; and
3. In addition to the payoff balance, there is approximately \$60,461.82 outstanding to our office for additional attorney's fees and costs incurred since Farrar's calculation of the balance outstanding July 31, 2008.

In essence, because of John Finstad's alleged conversion of Beresford's cattle and other personal property, John Finstad executed the Settlement Agreement in which the real estate was conveyed to Beresford Bancorporation and Beresford Bancorporation in turn allowed John Finstad the option to rent the property for 5 years, option to purchase the property for 5 years if no defaults existed, and if defaults existed and that the defaults are not cured, Beresford Bancorporation was authorized to conduct an auction sale of the property, receive sufficient funds from the auction sale to pay the debt outstanding to Beresford Bancorporation in full, and any surplus proceeds were to be remitted to Finstad.

Complaint Exhibit "H"

Mr. David L. Johnson
June 20, 2008
Page 2

From the way it looks to me, the intent of the Finstads and the Clemensons is to apply the \$125,000 payment to the Gords on the mortgage debt owed to the Gords, in order to reduce the amount outstanding on the Gord mortgage (thereby giving the Clemensons' second position more of an equity position in the process). This intent, of course, leaves the Gords' other debt high and dry.

Please be advised that the Gords will not accept the \$125,000 payment contemplated by the Finstads and the Clemensons to be paid to the Gords. It seems obvious that the Bankruptcy Court will have to sort out (1) what happened between the Gords and the Finstads, and (2) what can happen now, involving the Clemensons. If any Bankruptcy Court approval is needed by the Gords (and my hunch is that it is), then the Gords have no interest in doing anything now that may have to be undone later.

Sincerely yours,

OHNSTAD TWICHELL, P.C.



Michael D. Nelson

MDN:kt

cc via e-mail and fax only:

Mr. Bob Schaefer, Paralegal

- e-mail: bschaefer@stefansonlaw.com

- FAX: 236-6697

Mr. Brad A. Sinclair

- e-mail: bsinclair@serklandlaw.com

- FAX: 237-4049

GT

August 13, 2008

RECEIVED
AUG 14 2008

David L. Johnson
Attorney at Law
P. O. Box 2189
Fargo, ND 58108-2189

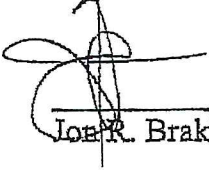
BY:-----

RE: John N. & Lorie Finstad Bankruptcy/Jim and Wendy Gord
Bankruptcy No. 05-31470
Our File No. 37190.08000

Dear Mr. Johnson:

As I indicated when we spoke on August 13th, I represent James and Wendy Gord with respect to their claims against John and Lorie Finstad. The Finstads obtained loans from the Gords post-petition. The loans were never approved by the United States Bankruptcy Court for the District of North Dakota. As a consequence, we have agreed that any discharge entered in the Finstad bankruptcy case will have no impact on the claims of the Gords against the Finstads. For this reason, the Gords will not take any action to oppose the Finstads' request for a discharge in their bankruptcy case.

Very truly yours,



Jon R. Brakke

JRB:ldt

cc: Michael Nelson
676364.1

October 9, 2008

Mr. Frank Farrar
P.O. Box 936
Britton, SD 57430

~~Mr. Jon Brakke~~
Attorney at Law
P.O. Box 1389
Fargo, ND 58107

RE: Beresford Bancorporation / John and Lorie Finstad

Gentlemen:

Enclosed please find my redrafted Assignment Agreement. Please review the same and contact my office regarding questions you may have.

Enclosed please find my working copy which demonstrates the changes or areas that I have inserted language into the Assignment Agreement.

Yours very truly,

SERKLAND LAW FIRM

Brad A. Sinclair

BAS/slm
enclosures

QUIT CLAIM DEED

THIS INDENTURE made this 2nd day of November, 2008, between Beresford Bancorporation, 600 Main Street, P. O. Box 1029, Britton, SD 57430-1029, Grantor, and James Gord and Wendy Gord, husband and wife, 4450 East Sandwich Road, Sandwich, IL 60548, collectively Grantee.

WITNESSETH that Grantor for good and valuable consideration, the sufficiency of which is hereby acknowledged, does **SELL, REMISE, RELEASE, AND GRANT AND QUIT CLAIM** to Grantee, their successors and assigns forever, all of Grantor's right, title, interest, claim or demand in and to the following tract or parcel of land lying and being in the County of Ransom, State of North Dakota, and described as follows, to-wit:

E ½ of Section 9, and the S ½ of the NW ¼ Section 15, Township 134, Range 54

THE ABOVE LEGAL DESCRIPTION WAS TAKEN FROM A PREVIOUSLY RECORDED DOCUMENT.

together with all improvements, hereditaments, appurtenances, and easements related thereto.

This conveyance does not constitute a merger of interest with respect to the rights of James Gord and Wendy Gord under the following real estate mortgages:

- a. A real estate mortgage between John Finstad and Lorie Finstad and Grantee of date June 7, 2006, filed for record with the Ransom County, North Dakota County Recorder on September 26, 2006 at 3:25 p.m., as Document No. 164915.
- b. A real estate mortgage between John Finstad and Lorie Finstad and Beresford Bank Corporation of date June 13, 2003, filed for record with the Ransom County, North Dakota County Recorder on June 18, 2003 at 10:30 a.m., as Document No. 159760, the rights of Beresford Bank Corporation under said mortgage have been as signed to Grantee.
- c. A real estate mortgage between John Finstad and Lorie Finstad and Beresford Bank Corporation of date March 20, 2004, filed for record with the Ransom County, North Dakota County Recorder on March 25, 2004 at 9:00 a.m., as Document No. 161225, the rights of Beresford Bank Corporation under said mortgage have been as signed to Grantee.
- d. A real estate mortgage between John Finstad and Lorie Finstad and Beresford Bank Corporation of date June 18, 2004, filed for record with the Ransom County, North Dakota County Recorder on July 1, 2004 at 11:56 a.m., as

**Quiet Title Action
EXHIBIT "C"
Page 1 of 3**

Pg 1 of 3

Fee: \$16.00

168480
State of North Dakota)
County of Ransom)

Recorded: 11/2/2008 At 4:30 PM

Susan J Froemke, Recorder By

Return To: OHNSTAD TWICHELL PO BOX 458

WEST FARGO ND 58078

Document No. 161772, the rights of Beresford Bank Corporation under said mortgage have been as signed to Grantee.

- e. A real estate mortgage between John Finstad and Lorie Finstad and Beresford Bank Corporation of date June 18, 2004, filed for record with the Ransom County, North Dakota County Recorder on July 1, 2004 at 11:54 a.m., as Document No. 161771, the rights of Beresford Bank Corporation under said mortgage have been as signed to Grantee.

Grantee reserves all rights to proceed with foreclosure of said mortgage as against junior lienholders, mortgagors, encumbrances, etc. so as to obtain clear title to the above-described property.

IN TESTIMONY WHEREOF, the Grantor has executed this deed on the day and year first above written.

BERESFORD BANCORPORATION

By: *Sandi K. Davis*

Its: *Chairman*

168480 Fee: \$16.00 Pg 2 of 3
State of North Dakota)
County of Ransom)
Recorded: 12/2/2008 At 4:30 PM
Susan J Froemke, Recorder By _____
Return To: OHNSTAD TWICHELL PO BOX 458
WEST FARGO, ND 58078

Quiet Title Action
EXHIBIT "C"
Page 2 of 3

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF South Dakota)

The foregoing instrument was acknowledged before me this 28 day of ~~September~~ ^{November}, 2008, by Frank Farrar the Chairman of Beresford Bancorporation, a corporation, on behalf of the corporation.

Branda Hoglund
Notary Public
My Commission expires: 12-2-2010.

(SEAL)

The undersigned certifies that in accord with NDCC § 11-18-02.2(6)(I) as a consequence of the transfer of the above described property occurring by Deed, no report or statement of full consideration need be filed pursuant to NDCC § 11-18-02.2(1)(a), (b) and/or (c).

Dated: December 2, 2008.

[Signature]
Grantee or Authorized Agent

This Instrument was Drafted by:

Jon R. Brakke
Vogel Law
P.O. Box 1389
218 NF Avenue
Fargo, ND 58107-1389

Tax Statements for the Real Property described in this instrument should be sent to:

James Gord and Wendy Gord
4450 East Sandwich Road
Sandwich, IL 60548

685543.1

OFFICE OF COUNTY RECORDER *gr*
State of North Dakota)
County of Ransom)

I hereby certify that the within instrument was filed in this office for record on 12/2/2008 at 4:30 PM, and was duly recorded as Document Number 168480

Susan J Froemke Recorder *e*

By [Signature] Deputy *✓*

Fee \$16.00 OHNSTAD TWICHELL PO BOX 458
WEST FARGO, ND 58078

Delinquent taxes and special assessments or installments of special assessments paid and TRANSFER ENTERED this 2 day of December, 2008

[Signature]
RANSOM COUNTY AUDITOR
By [Signature]
Clerk/Deputy, Ransom County Auditor

Current taxes or current special assessments or installments of special assessments are unpaid in the amount of \$ —



UK #18661

\$16.00 pd

Ohnstad Twichell
12/2/08

Quiet Title Action
EXHIBIT "C"
Page 3 of 3

December 2, 2008

Mr. Jon Brakke
Attorney at Law
P.O. Box 1389
Fargo, ND 58107

RE: ~~Beresford Bancorporation Assignment of all of its Rights and Interest in
Loan Documentation and Real Estate With John Finstad and Lorie Finstad
to the Gords~~

Dear Mr. Brakke:

Pursuant to our telephone conferences of earlier today, you have requested my suggested changes to the Assignment Agreement and a copy of the Assignment Agreement that was circulated to Frank Farrar last night after 5:15 p.m., in which he did not sign because the Assignment Agreement did not accurately reflect the agreement between Beresford Bancorporation and the Finstads. Beresford Bancorporation desires that the Assignment Agreement accurately portray the agreement between Beresford Bancorporation and the Finstads. Please contact my office regarding the acceptability of the proposed redrafted of the agreement.

Yours very truly,

SERKLAND LAW FIRM

Brad A. Sinclair

BAS/slm
enclosure

Cc: Frank Farrar

ASSIGNMENT AGREEMENT

1.1 Pursuant to a Settlement Agreement and Release Agreement dated January 10, 2006, executed by John Finstad and Lorie Finstad (hereinafter "Debtors"), Exhibit K, the Debtors acknowledged they are obligated to Beresford Bancorporation, Inc. (hereinafter "Beresford") pursuant to the terms of the following promissory notes:

	<u>Date of Note</u>	<u>Original Principal Balance</u>
A.	June 13, 2003	\$227,250.00
B.	March 20, 2004	\$ 51,000.00
C.	June 18, 2004	\$ 15,300.00
D.	June 18, 2004	\$ 45,900.00

The above-referenced promissory notes are hereinafter collectively referred to as the

"Notes", true and accurate copies of the Notes are annexed hereto as Exhibits A through

D.

1.2 To collateralize the indebtedness due to Beresford on the Notes, the Debtors granted Beresford the following mortgages:

- A. A Mortgage dated June 13, 2003 in the following described real property located in Ransom County, State of North Dakota: E ½ of Section 9, and the S ½ of the NW ¼ Section 15, Township 134, Range 54. Said Mortgage was duly filed with the Ransom County, North Dakota Recorder on the 18th day of June, 2003 at 10:30 a.m. as document number 159760. Said Mortgage secures the obligations due on the June 13, 2003 Promissory Note payable in the original amount of \$227,250.00; a true and accurate copy of said Mortgage is annexed hereto as Exhibit E;
- B. A Mortgage dated March 20, 2004 in the following described real property located in Ransom County, State of North Dakota: East ½ (E ½) of Section Nine (9), Township 134 North, Range 54 West; and S ½ of the NW ¼ Section 15, Township 134, Range 54. Said Mortgage was duly filed with the Ransom County, North Dakota Recorder on the 25th day of March, 2004 at 9:00 a.m. as document number 161225. Said Mortgage secures the obligations due on the March 20, 2004 Promissory Note originally payable

December 2, 2008

Mr. Jon Brakke
Attorney at Law
P.O. Box 1389
Fargo, ND 58107

**RE: Beresford Bancorporation Assignment of all of its Rights and Interest in
Loan Documentation and Real Estate With John Finstad and Lorie Finstad
to the Gords**

Dear Mr. Brakke:

Pursuant to our telephone conferences of earlier today, you have requested my suggested changes to the Assignment Agreement and a copy of the Assignment Agreement that was circulated to Frank Farrar last night after 5:15 p.m., in which he did not sign because the Assignment Agreement did not accurately reflect the agreement between Beresford Bancorporation and the Finstads. Beresford Bancorporation desires that the Assignment Agreement accurately portray the agreement between Beresford Bancorporation and the Finstads. Please contact my office regarding the acceptability of the proposed redrafted of the agreement.

Yours very truly,

SERKLAND LAW FIRM

Brad A. Sinclair

BAS/slm
enclosure

Cc: Frank Farrar

"Security Agreements". Subsequent to the execution of the Settlement and Release Agreement, the Finstads tendered significant sums of money to Beresford to reduce their obligation outstanding to Beresford and in consideration thereof, Beresford released its security interest in the debtor's various personal property except irrigators. Beresford's only interest in the Finstads' real and personal property is the real estate described herewithin pursuant to the real estate mortgages and asserting a security interest in the irrigators.

1.4 Pursuant to the Settlement Agreement entered into between Beresford and the Debtors, Beresford consolidated the Debtors' obligations under the promissory notes as referred to herewithin and as of October 17, 2008, there was due and owing on the combined promissory notes the following amounts: principal balance of \$57,813.66, accrued interest of \$2,692.15, interest rate at the annual rate of 8%, and a total balance due and owing of \$60,505.81.

1.5 In addition, Beresford entered into a loan transaction with the Debtors on or about January 12, 2007, in the principal amount of \$5,555.00. The Note was unsecured. As of November 21, 2008, there was due and owing under said January 12, 2007, Promissory Note, principal balance of \$3,333.80, accrued interest of \$599.17, and interest rate of 20%, for a total balance outstanding in the amount of \$3,932.97. The January 12, 2007, Promissory Note is unsecured.

1.6 Under the terms of the Settlement Agreement, Exhibit K, the Debtors conveyed the Real Property to Beresford by a deed in lieu of foreclosure in non-merger

in the principal amount of \$51,000.00, a true and accurate copy of said Mortgage is annexed hereto as Exhibit F;

- C. A Mortgage dated June 18, 2004 in the following described real property located in Ransom County, State of North Dakota: East ½ (E ½) of Section Nine (9), Township 134 North, Range 54 West; and S ½ of the NW ¼ Section 15, Township 134, Range 54. Said Mortgage was duly filed with the Ransom County, North Dakota Recorder on the 1st day of July, 2004 at 11:56 a.m. as document number 161772. Said Mortgage secures the obligations due on the June 18, 2004 Promissory Note payable in the original principal amount of \$15,300.00, a true and accurate copy of said Mortgage is annexed hereto as Exhibit G; and
- D. A Mortgage dated June 18, 2004 in the following described real property located in Ransom County, State of North Dakota: East ½ (E ½) of Section Nine (9), Township 134 North, Range 54 West; and S ½ of the NW ¼ Section 15, Township 134, Range 54. Said Mortgage was duly filed with the Ransom County, North Dakota Recorder on the 1st day of July, 2004 at 11:54 a.m. as document number 161771. Said Mortgage secures the obligations due on the June 18, 2004 Promissory Note payable in the original principal amount of \$45,900.00, a true and accurate copy of said Mortgage is annexed hereto as Exhibit H.

The above-described Mortgages are hereinafter collectively referred to as the "Mortgages". The real estate encumbered by the Mortgages will hereinafter be referred to as the "Real Property."

1.3 To further collateralize the indebtedness due on the Notes, the Debtors granted Beresford security interests in the Debtors' personal property including: farm machinery, tools, supplies, farm inventory, crop inventory, vehicles, livestock, irrigators, general intangibles, rights to payment, contract rights, accounts receivable and proceeds. True and accurate copies of the security agreements executed by the Debtors in favor of Beresford are annexed hereto as Exhibit I and hereinafter collectively referred to as the

Debtors made the payment due on March 15, 2008; however, the Debtors failed to, as part of the Settlement Agreement, to pay taxes current on the real estate and due to such failure, Beresford provided the Debtors with Notice of Default and Right to Cure. The Debtors have failed to timely cure the default and Beresford has asserted that the Debtors' interest in the real estate including any option to purchase is terminated and Beresford is free to sell the real estate according to the terms and conditions of the Settlement Agreement.

1.10 Pursuant to the Settlement Agreement, upon the Debtors failure to timely cure any default under the Settlement Agreement, Beresford may conduct an auction sale of the Real Property. Beresford has begun advertising the auction sale and was in the process of obtaining bid packages until the Jim Gord and Wendy Gord expressed interest in acquiring Beresford's interest in the Settlement and Release Agreement and related loan documents.

1.11 It is the desire of Beresford to assign, transfer, convey and sell to Jim Gord and Wendy Gord (hereinafter the "Gords") all of Beresford's right, title and interest in the Promissory Notes, Real Estate Mortgages, the Settlement Agreement, all related agreements, documents, instruments and proceeds, and the Real Property.

1.12 NOW, THEREFORE, for good and valuable consideration, including the payment of \$64,438.78 by the Gords to Beresford, the receipt and sufficiency of which is hereby acknowledged, Beresford and the Gords stipulate and agree as follows:

form (hereinafter the "Deed"). The Deed was duly filed with the Ransom County Recorder on the 20th day of January, 2006 at 10:30 a.m. as document number 164056. A true and accurate copy of the Deed is annexed hereto as Exhibit L.

1.7 Pursuant to the Settlement Agreement, the Debtors, prior to recordation of the Deed, were given an option to purchase the Real Property on or before January 1, 2006 by paying an agreed upon sum to Beresford. The Debtors failed to make this payment and their purchase rights terminated.

1.8 Pursuant to the Settlement Agreement, the Debtors were given the option to cash rent the Real Property for the years 2006 through 2010 by paying certain sums of monies to Beresford. The Debtors exercised their option to rent the real estate for the 2008 calendar year and did properly pay Beresford to rent the real estate for the 2008 calendar year; however, the Debtors breached their agreement with Beresford by failing to pay outstanding real estate taxes by May 1, 2008. Beresford provided the Debtors with numerous notices to cure the default and after their failure to do so, Beresford asserts under the Settlement and Release Agreement entered into between the parties, Beresford is free now to sell the real estate pursuant to the parties' Settlement Agreement, and terminate the Finstads further renting and/or exercising any control or diminution over the real estate for the calendar year 2009;

1.9 Pursuant to the Settlement Agreement, the Debtors were granted an option extending to March 15, 2010 to purchase the Real Property from Beresford. To maintain the option the Debtors were required to make annual payments to Beresford. The

debts owed by the Debtors to Beresford, the real and personal property security held therefore and the subject matter of said documents.

- (f) Apart from the Assigned Documents, there are no other oral or written agreements respecting the Assigned Documents or the debts to Beresford by the Debtors and/or the real or personal property security held for such debts.
 - (g) Beresford has not agreed to any waiver, modification or alteration of the terms of the Assigned Documents.
 - (h) Beresford has complied with all of the terms and conditions of the Assigned Documents.
 - (i) The Debtors have not asserted any defenses, legal or equitable, to enforcement of the terms of the Assigned Documents.
-
- (j) Beresford lacks any knowledge to the contrary that its Mortgages constitute first priority liens and encumbrances against the Real Property.
 - (k) Beresford has the requisite power and authority to execute this Assignment and perform all duties required thereunder and execution and performance has been duly approved and authorized by all necessary representatives of Beresford and constitutes an agreement enforceable against Beresford in accord with its terms.
 - (l) Beresford is the sole owner and holder of the Assigned Documents and is not aware of any restrictions of any kind or nature, upon Beresford in transferring the assigned documents. Based upon information and belief, the Debtors entered into a long term lease arrangement leasing a portion of the real estate to a Brian Vculek. Beresford has requested that Brian Vculek tender his rental payments due under his lease arrangement with the Debtors either directly to Beresford or at least place Beresford's name on said rental checks. Beresford asserts that it has not entered into any agreement with Vculek that Vculek's leases binds Beresford to Vculek's leasing of the real estate for any periods of time subsequent to December 31, 2008, nor has Beresford consented to Vculek's leases taking priority over Beresford's rights to terminate the rights of the Debtors to lease and/or purchase the real estate. Vculek may

II. Assignment of Interests

2.0 By executing this Agreement, Beresford hereby assigns, conveys, sells and transfers to the Gords all of the right, title and interest of the Beresford in the Notes, Mortgages, Settlement Agreement, Security Agreement, and perfection documents limited to irrigators and any fixture upon the real estate, all associated and related agreements, documents and instruments, all proceeds and all related indebtedness and security held therefor (hereinafter collectively the "Assigned Documents") and the Real Property. The term "proceeds" as used herein includes, but is not limited to, all claims for loss or damage and/or with respect to insurance coverage available for loss or damage to the real property and fixtures collateral encumbered by virtue of the Mortgages and the Security Agreements.

2.1 Beresford warrants and represents to the best of its knowledge:

- (a) The statements contained in paragraphs 1.1 - 2.1 are true and correct;
- (b) No payments have been received by Beresford on the Notes subsequent to September 1, 2008;
- (c) The Debtors have failed to make the requisite payments under the Settlement Agreement, i.e., pay real estate taxes current, so as to retain the right to rent or an option to purchase the Real Property. Beresford is the sole owner of the Real Property. Beresford's only obligation with respect to the Real Property is to conduct an auction sale of the same pursuant to the terms of the Settlement Agreement;
- (d) The Debtors are not entitled to any credits or offsets on the indebtedness due under the Assigned Documents;
- (e) The Assigned Documents constitute the sole and exclusive agreements between Beresford and the Debtors with respect to any

merge into the Gords' title to the Real Property acquired by virtue of the Quit Claim Deed from Beresford to the Gords. The Gords shall, at all times, retain the right to pursue such foreclosure proceedings as are necessary to eliminate any interests, mortgages, liens, encumbrances, etc. asserted by other individuals or entities in or against the Real Property. The delivery and/or recordation of the Quit Claim Deed from Beresford to the Gords shall not be deemed a waiver by the Gords of their claim of priority under their mortgage or the Mortgages encumbering the Real Property over any other interests, mortgages, liens or encumbrances against the Real Property.

2.5 Apart from the Mortgages, Beresford, or a related entity – People's Holding Company – hold the following described mortgages in the Real Property:

- A. A mortgage dated July 12, 2002 duly filed with the Ransom County, North Dakota Recorder on July 15, 2002 at 4:00 p.m. in Book 182 of mortgages, pages 676 through 703 as Document No. 158123.
- B. A mortgage dated March 25, 2003 duly filed with the Ransom County, North Dakota Recorder on March 28, 2003 at 2:30 p.m. as Document No. 159311.
- C. A mortgage dated November 11, 2003 duly filed with the Ransom County, North Dakota Recorder on November 17, 2003 at 9:05 a.m. as Document No. 160589. Beresford and/or Peoples Holding company, as applicable will execute satisfactions of the Mortgages and deliver the satisfactions to the Gords.

2.6 Beresford's assignment of the Assigned Documents and transfer of the Real Property is without recourse. However, such shall not serve to limit, impair or modify

assert that his leases are binding and enforceable against Beresford until they terminate.

2.2 The Gords shall indemnify and hold Beresford harmless with respect to any claims, causes of action, demands for payment of money, etc. and/or for loss sustained by Beresford as a consequence of the Gords' acts or omissions with respect to the Assigned Documents, including the Debtors' assertions that Beresford cannot assign its rights under the Settlement Agreement and loan documents to the Gords and/or the Gords failure to comply with the terms of the Settlement Agreement. The Gords will indemnify and defend any said assertion by the Debtors at the Gords' sole cost.

2.3 Beresford will execute and deliver to the Gords assignments in recordable form with respect to the Assigned Documents. Beresford will deliver to the Gords the originals of the Assigned Documents with all necessary assignment notations made on the original documents. Beresford will execute and deliver to the Gords a Quit Claim Deed in the form of Exhibit M annexed hereto to the Real Property. Additionally, Beresford will execute and deliver to the Gords all other documents, instruments, etc. as reasonably requested by the Gords to give full force and effect to this Agreement.

2.4 Notwithstanding delivery and recordation of the Quit Claim Deed conveying the Real Property by Beresford to the Gords, the Gords hold a mortgage in the Real Property, which mortgage was duly filed with the Ransom County, North Dakota Recorder on September 26, 2006 at 3:25 p.m. as Document No. 164915 which the Gords assert encumbers the Real Property and the parties agree that the Mortgages which are being assigned by Beresford to the Gords will remain in full force and effect and will not

the representations and the warranties of Beresford made herein and those representations and warranties will survive the closing of the transactions contemplated by this Agreement and remain fully binding and enforceable.

2.7 This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter of this Agreement and may not be modified, other than pursuant to a further written agreement executed by the party alleged to be bound by such modification.

2.8 No delay in enforcing any of the provisions of this Agreement shall be deemed a waiver of any such provisions absent the execution of a waiver in writing by the party claimed to have waived any rights hereunder. Any waiver shall be limited to the particular fact situation and shall not be considered a waiver of any future claims or rights under this Agreement or with respect to any other fact situation.

2.9 This Agreement is to be interpreted and construed under the laws of the State of North Dakota.

2.10 With respect to actions under this Agreement, time is of the essence.

2.11 The parties agree that this Agreement becomes valid and enforceable once it is executed by an authorized representative of Beresford and by the Gords. Execution of the consent to assignment by the Debtors is not a condition precedent to the validity and enforcement of this Agreement.

Dated: _____, 2008.

BERESFORD BANCORPORATION,
INC.

By: _____
Its: _____

Dated: _____, 2008.

Jim Gord

Dated: _____, 2008.

Wendy Gord

Jack G. Marzil
Ronald H. McLean
Roger J. Minch
Maureen Holman
Brad A. Sinclair
Jane L. Dynes
Timothy G. Richard
Joseph A. Weich, Jr.
Betsy D. Nelson
Nicholas D. Thornton

Also Licensed in MN



LAW FIRM

SINCE 1888

Gary A. Rockne
Office Manager

Retired:
Armond G. Erickson
Lowell W. Lundberg

Norman G. Tenneson
(1898-1982)
Chester J. Serkland
(1909-1996)

December 2, 2008

Sent Via Email, Fax and Regular Mail
jbrakke@vogellaw.com/476-7676

Mr. Jon Brakke
Attorney at Law
P.O. Box 1389
Fargo, ND 58107

**RE: Beresford Bancorporation Assignment of all of its Rights and Interest in
Loan Documentation and Real Estate With John Finstad and Lorie Finstad
to the Gords**

Dear Mr. Brakke:

I emailed you at 4:49 a.m., on December 2, 2008, informing you of the Assignment Agreement that was redrafted by both of us last night and completed at 5:15 p.m., awaiting for my client, Frank Farrar's review and approval of the same, and your client's review and approval, has not been approved by Frank Farrar. I informed you at 4:49 a.m., this morning that Frank Farrar has not granted you authority to consummate the Assignment Agreement by recording the deed from Beresford Bancorporation to James and Wendy Gord nor recording of any mortgage releases. Frank Farrar has reviewed the Assignment Agreement and the Assignment Agreement does not accurately reflect the understanding between Beresford Bancorporation and John and Lorie Finstad. Pursuant to numerous conversations I have had with yourself and Frank Farrar has had with Jim Gord, it was Beresford Bancorporation's intention that Beresford would never receive more from the liquidation of John and Lorie Finstad's real estate, than full payment of the indebtedness outstanding to Beresford Bancorporation, the approximate amount of \$64,000.00 and any surplus proceeds would be repaid/tendered to John and Lorie Finstad. Frank Farrar has never wanted to receive more than the debt owing to Beresford Bancorporation and should Beresford receive any surplus from the sale of the Finstad real estate, such will be returned to the Finstads. This has been represented to the Finstads on numerous occasions prior to and subsequent to the Finstads' execution of the Settlement Agreement and Release Agreement dated January 10, 2006, executed by John and Lorie Finstad and delivered to Beresford Bancorporation. Frank

Farrar has reviewed the Assignment Agreement and the original Agreement entered into between Beresford Bancorporation and the Finstads is not contained in the Assignment Agreement nor is accurately reflected in the Settlement Agreement. Moreover, Beresford Bancorporation cannot execute the Assignment Agreement since Beresford Bancorporation is now knowledgeable that the Settlement Agreement and Release Agreement does not truly represent the understanding between Beresford Bancorporation and the Finstads and that the Assignment Agreement warranties would be incorrect under the Assignment Agreement. My office has informed you that Beresford Bancorporation, pursuant to Settlement Agreement, noticed the Finstads' real estate for sale, received bids in excess of \$928,000.00 for the sale of the real estate which Beresford Bancorporation was owed \$64,000.00. It was Beresford Bancorporation's intention is to sell sufficient real estate to pay off the Finstad's obligation outstanding to Beresford, \$64,000.00, and then convey the remainder portion of the real estate and/or all surplus proceeds from the sale of the real estate to John Finstad. Because of John Finstad's letter indicating that he was suicidal and may harm himself if Beresford sold the real estate, Beresford agreed to assign its interest in the real estate to the Gord's with the understanding that the Gord's could only enforce the assignment documents for the amount outstanding to Beresford Bancorporation. It was Beresford's understanding that the benefit of the Gord's receiving Beresford's interest in the real estate was to notice the real estate for sale, sell the real estate, file with the court prior to the sale of the real estate a request for writ of attachment in legal proceedings the Gord's have commenced against Finstad and in legal proceedings the Gord's have not commenced yet against Finstad seeks a court order authorizing the seizure of said funds sufficient to pay the Gord's in full on their unenforceable real estate mortgages and the note secured by a security interest in the Finstads' personal property for a total amount of \$450,000.00, plus the \$64,000.00 the Gord's will pay Beresford Bancorporation to acquire Beresford's interest in the real estate, and remit all surplus sale proceeds to the Finstads, at one time estimated to be in excess of \$400,000.00.

Beresford also believed that the Gord's, once acquiring Beresford's interest in the real estate, and in lieu of a writ of attachment, may negotiate with the Finstads, obtain payment on the \$64,000.00, convey the real estate to the Finstads so that the mortgages the Finstads have executed and delivered to the Gord's are now enforceable since the Finstads would now own the real estate, and either foreclose its mortgages or take some other appropriate action to enforce its mortgages.

As you will recall, this Assignment Agreement was redrafted at 5:15 last night. The parties agreed that pending review and signature of the agreement by clients, the settlement proceeds, approximately \$64,000.00 the Gord's were to tender to Farrar would be escrowed with my office while your office would escrow the deed and the satisfaction of mortgages. Since the agreement does not accurately reflect Beresford Bancorporation's understanding and agreement with the Finstads and since the Assignment Agreement warranties are not accurate, Beresford Bancorporation cannot execute the Agreement. Please contact my office in which we can exchange the unrecorded deed and unrecorded satisfaction of mortgages to my office and I can exchange the \$64,000.00 of payment you have tendered to my office.

Yours very truly,

SERKLAND LAW FIRM


Brad A. Sinclair

BAS/slm

Cc: Frank Farrar

Jack G. Marcell
 Ronald H. McLean
 Roger J. Minch
 Maureen Holman
 Brad A. Sinclair
 Jane L. Dynes
 Timothy G. Richard
 Joseph A. Welch, Jr.
 Berly D. Nelson

Also Licensed in MN



Gary A. Rockne
 Office Manager

Retired:
 Armond G. Erickson
 Lowell W. Lundberg

Norman G. Tenneson
 (1898-1982)

Chester J. Serkland
 (1909-1996)

January 28, 2009

John Finstad
 14060 Highway 27
 Lisbon, ND 58054

RE: John Finstad

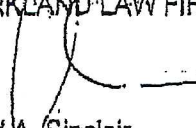
Dear John:

The purpose of this correspondence is to confirm my telephone conference with Don Eppler on January 28, 2009. I contacted Don Eppler regarding Brian Vculek litigation relating to the lease that you entered into with him. Don Eppler asserts that he has been in contact with Mike Nelson, the attorney for the Gord's, and that the Gord's have offered the Finstad real estate for sale to Brian Vculek, that Brian Vculek has declined to purchase it because of John Finstad's potential interest in the same, that the Gord's will be filing a proceeding to have the court determine that the Finstads have no interest in the real estate.

Pursuant to our conversations, I have informed you that Frank Farrar and myself will testify that I have informed the Gord's legal counsel, Jon Brakke, and that Frank Farrar has informed the Gord's, that pursuant to the Finstad agreement, the real estate is to be sold, the indebtedness outstanding to Farrar is to be paid and the remaining proceeds are to be tendered to the Finstads.

Yours very truly,

SERKLAND LAW FIRM



Brad A. Sinclair

BAS/slm

ATTORNEYS & COUNSELORS AT LAW • A PROFESSIONAL CORPORATION
 10 Roberts Street • P.O. Box 6017 • Fargo, North Dakota 58108-6017
 Telephone (701) 232-8957 • Fax (701) 237-4049 • www.serklandlaw.com

EXHIBIT "V"

Jack G. Marcil
Ronald H. McLean
Roger J. Minch
Maureen Holman
Brad A. Sinclair
Jane L. Dynes
Timothy G. Richard
Joseph A. Wetch, Jr.
Beirly D. Nelson

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Norman G. Tenneson
(1898-1982)

Chester J. Serkland
(1909-1996)

February 3, 2009

John Finstad
14060 Highway 27
Lisbon, ND 58054

RE: John Finstad

Dear John:

This correspondence is in regards to your request outlining what occurred relating to your obligation outstanding to Beresford Bancorporation.

Prior to your bankruptcy proceedings, John and Lori Finstad had various obligations outstanding to Beresford Bancorporation as evidenced by real estate mortgages filed with the Ransom County Recorder's office and the Uniform Commercial Code UCC Financing Statements filed with the Ransom County/North Dakota Secretary of States' office.

When John and Lori Finstad filed for bankruptcy relief, a settlement agreement was entered into between Beresford Bancorporation and the Finstads. The agreement provided that the Finstads conveyed all of their rights, title and interest in the real estate to Beresford Bancorporation, and in return Beresford Bancorporation released its UCC/Financing Statements against the Finstads' personal property freeing the property up to the Finstads to further encumber and/or sell without tendering any proceeds to Beresford Bancorporation. In further consideration of the transaction, Beresford Bancorporation granted the Finstads an option to purchase the real estate, and the right to lease the property. When the Finstads tendered to Beresford Bancorporation a sum in excess of \$300,000.00, the parties orally modified the settlement agreement to provide that in the event the Finstads were in default of their obligations outstanding to Beresford Bancorporation and the Finstads failed to cure the default, Beresford Bancorporation would place the Finstad property for sale, take the highest offer by either requiring a bid price for the entire real estate or selling enough real estate to satisfy the Finstads' debt to Farrar and release the remaining real estate to the Finstads. Beresford Bancorporation agreed that all surplus proceeds received from the

auction sale, after payment of the Beresford Bancorporation debt, would be tendered to the Finstads.

Because the Finstads defaulted in their obligations outstanding to Beresford Bancorporation; Beresford Bancorporation notified the Finstads of their default and right to cure. The Finstads failed to cure the default. Beresford Bancorporation solicited bids to the real estate and was going to conduct an auction sale of the property, obtain sufficient proceeds to pay the Finstads' obligations outstanding to Beresford Bancorporation in full, approximately \$65,000.00, and either convey the remaining real estate to the Finstads after payment of Beresford Bancorporation debt in full or convey all remaining surplus sale proceeds to the Finstads. Due to concerns about John Finstad's health if Beresford Bancorporation proceed forward with the sale of the real estate, Beresford Bancorporation agreed to assign its interest to, in the Finstad settlement agreement, to John and Wendy Gord for the amount outstanding to Beresford Bancorporation, approximately \$65,000.00. Beresford Bancorporation received bids for the Finstad real estate in an amount in excess of \$900,000.00.

Beresford Bancorporation and the Gords held discussions and were nearly in a mutual agreement as to the terms and conditions of assigning Beresford Bancorporation's interest in the real estate to the Gords when the parties were unable to agree to the terms and conditions of the assignment language. Beresford Bancorporation, President Frank Farrar, informed the Gords of the oral modification of the settlement agreement entered into between Beresford and the Finstads on numerous occasions and prior to parties nearly completion of the terms and conditions of the assignment agreement. Beresford's legal counsel, myself, informed the Gords' legal counsel, Jon Brakke of the oral modification of the bankruptcy settlement agreement with the Finstads. Because the parties believed that they were close in consummating the assignment agreement, the Gords transferred the pay off funds to Beresford Bancorporation and Beresford Bancorporation executed a quit claim deed conveying the real estate to the Gords to be held until the assignment agreement was executed. A dispute arose as to the final language of the assignment agreement between Beresford Bancorporation and the Gords as to describing in the assignment agreement the oral agreement between Beresford Bancorporation and John and Lori Finstad regarding the right to all sale proceeds from the sale of the real estate upon the Finstads' default of the agreement. Correspondence was sent to Attorney Jon Brakke on December 2, 2008, prior to 10:00 a.m., in addition to an email being sent to Attorney Jon Brakke at 4:49 a.m., on December 2, 2008, informing Jon Brakke that the agreement in negotiations between the parties has not been approved by Beresford Bancorporation and that Beresford Bancorporation did not authorize Jon Brakke to consummate the assignment by recording the deed from Beresford Bancorporation to James and Wendy Gord nor further encumbering the real estate. Despite the email at 4:49 a.m., on December 2, 2008, and the correspondence from my office of December 2, 2008, the deed was recorded on December 2, 2008, at approximately 4:00 p.m., in the Ransom County Recorder's office. The deed was recorded contrary to Beresford's instructions.

The parties have been subsequently unable to further agree as to the terms and conditions of the assignment agreement. Upon the inability to consummate the assignment agreement, Beresford Bancorporation on February 13, 2009, received the funds that the Gords and the Vogel Law Firm remitted to my office that was to be escrowed pending consummation of the assignment agreement. My office was unaware of the Gords recording of the deed for approximately 20 days until you informed my office of the recordation on approximately December 23, 2008.

Because the deed was recorded there has been no resolution of this matter, Beresford Bancorporation refuses to sign the assignment agreement. Enclosed please find a copy of the correspondence that I have forwarded to Attorney Jon Brakke regarding this matter dated December 2, 2008. The correspondence provides that the conveyance to the Gords only grants the Gords title to the property but the Finstads are entitled to all sale proceeds in excess of the amount necessary to satisfy Beresford Bancorporation's debt outstanding, approximately \$65,000.00. The Finstads are entitled to all surplus proceeds from the sale of the real estate.

Yours very truly,

SERKLAND LAW FIRM


Brad A. Sinclair

BAS/sim
Enclosure

Cc: Jon Brakke
Frank Farrar

Release of Term Permit

I, John Finstad, release to the Sheyenne Valley Grazing Association the following term permit:

150 AUP's attached to North Durler Allotment in Durler Block

The release is based on a purchase by James and Wendy Gord of the base property as follows:

E 1/2 of Section 9-134-54 (Shenford Township)
S 1/2 NW 1/4 of Section 15-134-54 (Shenford Township)

John N. Finstad

11/23/09

Signature and Date

Request for Term Permit

I, James and Wendy Gord, request the following term permit be issued to me by the Sheyenne Valley Grazing Association:

150 AU's attached to North Durler Allotment in Durler Block

This request is based on my purchase of the following base property (formerly John Finstad):

E 1/2 of Section 9-134-54 (Shenford Township)
S 1/2 NW 1/4 of Section 15-134-54 (Shenford Township)

James Gord

11/19/09

Signature and Date

James Gord

Wendy Gord

11/19/09

Signature and Date

Wendy Gord

EXHIBIT "S"

I, James and Wendy Gord, would like to request membership into the Shesenne Valley Grazing Association. I have purchased the former John Finstad base property.

My base property is listed as follows:

E $\frac{1}{2}$ of Section 9-134-54 (Shenford Township)

S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15-134-54 (Shenford Township)

My headquarters will be located at 14060 Hwy. 27, Lisbon, ND 58054, which is located on a tract in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of 9-134-54.

Attached is my \$5.00 membership fee.

James Gord
Signature James Gord

11-19-09
Date

Wendy Gord
Signature Wendy Gord

11/19/09
Date

lpthomas@drtel.net

From: "Robin D. Busch" <rbusch@ohnstadlaw.com>
To: <lpthomas@drtel.net>
Cc: <cowgrdpa@drtel.net>; "Michael Nelson" <rmnelson@ohnstadlaw.com>
Sent: Monday, November 30, 2009 4:59 PM
Attach: Agreement with Exhibits.pdf; BILL OF SALE OF PERSONAL PROPERTY.pdf
Subject: James and Wendy Gord/John Finstad Agreement

Lyle, John Finstad had difficulty opening the attachments to this e-mail and he asked that I send it to you. By copy of this e-mail, I am letting him know I have done so.

Attached is the Agreement between James and Wendy Gord and John Finstad with the Bill of Sale and Promissory Note Exhibits, along with the original Bill of Sale (the one not marked Exhibit A). John must sign the Agreement and both John and Lorie must sign the Bill of Sale. Both signed documents need to be returned to me by tomorrow, December 1, 2009. Because we will not know the value of the cattle until tomorrow, we cannot yet have James and Wendy sign and return the original Promissory Note. As soon as Troy Goltz provides the value of the cattle, James and Wendy will fill the value in the blank, sign the Promissory Note and then fax and overnight it to us. Mr. Nelson is in the process of drafting the separate agreement memorializing the agreement between you and Jim (with regard to Jim selling the cattle back to you under specific conditions). I will forward that as soon as it has been completed. Please call me if you have any questions regarding these documents or this process.

<<Agreement with Exhibits.pdf>> <<BILL OF SALE OF PERSONAL PROPERTY.pdf>>

Robin Busch, Paralegal

Ohnstad Twichell, P.C.

901 13th Avenue East

P.O. Box 458

West Fargo, ND 58078-0458

Telephone: 701-282-3249

Fax: 701-282-0825

E-Mail: rbusch@ohnstadlaw.com

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3/15/2012

PROMISSORY NOTE
(Non-Negotiable)

Sandwich, Illinois

Dec. 2, 2009

James Gord and Wendy Gord, for value received, hereby promise to pay to the order of John Finstad and Lorie Finstad, at 14060 Highway 27, Lisbon, North Dakota 58054, on December 31, 2010, in lawful money of the United States of America, the principal amount of ~~\$10,000.00~~ ^{\$ 7,650.37} ~~plus~~ ^{JTY f} together with interest on the unpaid principal amount from the date hereof, payable on December 31, 2010, at the rate of Two Percent (2%) per annum.

~~This promissory note has been accepted in and shall be governed by and construed and enforced in accordance with the substantive laws of the State of North Dakota.~~

This promissory note is non-negotiable and not assignable, and cannot be assigned or conveyed by John Finstad and/or Lorie Finstad to any person or entity.

Executed on the day and year first above written.

James Gord
James Gord

Wendy Gord
Wendy Gord

AGREEMENT

THIS AGREEMENT is made and entered into this 2nd day of December, 2009, between John Finstad, whose address is 14060 Highway 27, Lisbon, North Dakota 58054 (hereinafter called "Finstad"), and James Gord and Wendy Gord, whose address is 4450 East Sandwich Road, Sandwich, Illinois 60548 (hereinafter collectively called "Gord").

RECITALS:

A. Finstad and Gord desire to preserve and continue in effect a grazing permit associated with agricultural land in Ransom County, North Dakota, legally described as follows, to-wit:

~~E½ of Section 9-134-54 (Shenford Township)~~
S½NW¼ of Section 15-134-54 (Shenford Township)

(hereinafter called "Base Property").

B. The Base Property is currently subject to the Grazing Agreement and Rules of Management Between Sheyenne Valley Grazing Association and United States Department of Agriculture Forest Services for the Period of 2009 - 2019, including Rules C.3., C.4., and D.1. of the Rules of Management.

C. The Headquarters of the Base Property under the permit to be acquired by Gord is located in the NE¼ of Section 9-134-54 (Shenford Township), Ransom County, North Dakota.

NOW THEREFORE, in consideration of the mutual covenants set forth below, Finstad and Gord hereby agree as follows:

1. This Agreement is conditioned upon Sheyenne Valley Grazing Association accepting Gord's grazing permit application and approving it. If for any reason Gord does not get the grazing permit (whether through the fault of Finstad, Gord, or for any other reason) then this Agreement for a

James and Wendy Gord/John Finstad Agreement

farm/ranch manager shall be null and void, and there will be no hiring of Finstad by Gord to be a farm/ranch manager of the real property described in recital paragraph A above.

2. Finstad and Gord are entering into this Agreement in order to preserve increased potential value in the land described in recital paragraph A above, by virtue of continuing a grazing permit presently associated with that land.

3. If Gord is successful in getting a grazing permit from Sheyenne Valley Grazing Association for the Base Property, then Finstad is hired as Gord's farm/ranch manager and is required as a part of such hire to reside on the Headquarters on a year-long basis, as his primary residence, for the purpose of helping to conduct the livestock operation and to be actively involved with the winter feeding operation which is conducted on the Base Property.

4. The hiring of Finstad called for in this Agreement shall be an at-will hiring, terminable by either party at any time.

5. Any expenditure of money by Finstad for the care and feeding of cattle on the Base Property shall require the prior written consent of Gord.

6. Gord will purchase Finstad's present cattle herd of 37 head located on the Base Property, for a purchase price of \$450 per head, for a total purchase price of \$16,650.00. Finstad will issue to Gord a Bill of Sale for the 37 head, in the form of attached Exhibit "A." Payment for the cattle to be purchased by Gord shall be by: (a) a nonnegotiable promissory note, in the form of attached Exhibit "B," in the principal amount of \$7,780.37, with interest to accrue at the rate of 2% per annum, which promissory note shall be payable in full (principal and accrued interest) on December 31, 2010; plus the sum of \$8,869.63 to be paid to Farmers Union Oil Company, of Lisbon, North Dakota, to pay off a lien on Finstad's cattle to be purchased by Gord.

James and Wendy Gord/John Finstad Agreement

7. This Agreement, involving cattle/a grazing permit/a farm-ranch manager, is totally separate and apart from, and has no connection whatsoever with, on-going litigation or future litigation on debt presently owed by Finstad to Gord. Gord reserves all rights to pursue such litigation against Finstad, as though there were no cattle/grazing permit/farm-ranch manager arrangements between Finstad and Gord.

8. Finstad shall be responsible for the care and feeding of the cattle, as Gord's hired farm/ranch manager of the Base Property and Gord's cattle feeding operation.

9. The purchase of additional cattle, and sale of any and all cattle, will be determined by the Gord's, as owners of the cattle.

10. Farming of the cropland located on the real property described in recital paragraph A above will be controlled exclusively by Gord, as owner of the land.

11. The consideration going to Finstad, in part, is the right to live on the Headquarters during the term of this Agreement. Finstad is responsible for maintenance of all improvements, including farm buildings, fencing, and the mobile home (which mobile home is the property of Finstad), upkeep, and utilities, and all other expenses associated with living on the Headquarters property. The only expenses Gord will pay are real estate taxes and property insurance and liability insurance.

12. The intent of the parties is to retain the potential value of the grazing permit for the Base Property.

13. If there is any additional lien on Finstad's cattle (other than the lien to be paid off pursuant to paragraph 6 above) at the time they are sold to Gord, the amount of the lien shall be applied as a credit on the promissory note referred to above.

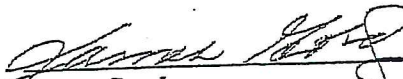
14. All prior negotiations and communications between the parties concerning the subject matter of this Agreement are merged into this Agreement.

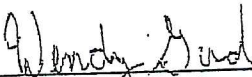
James and Wendy Gord/John Finstad Agreement

15. This Agreement may not be amended except in writing, signed by all parties to this Agreement.


16. This Agreement may be executed in counterparts and when each party to this Agreement has executed at least one counterpart, the Agreement shall be binding upon all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first-above written.


James Gord


Wendy Gord

James and Wendy Gord/John Finstad Agreement


John Finstad

Gord Plastics

From: cowgrdpa@drtel.net
Sent: Friday, April 08, 2011 7:23 AM
To: gordplastics@comcast.net
Cc: rpanzer@1stfarmcredit.com
Subject: Fwd: nd

Dear Jim;

I put .com rather than .net, I have to tell you that I am puzzled as to why there is any thoughts with respect to having anything to do with Troy. Lorie and I went last night to look at the hay and we discussed this situation about why Troy is even involved with our operation. I have not heard from him or anybody else and if I wouldn't of found the hay where would we be right now? I am going to be very busy on my days off this week just to tag and get things done that need to be done but I had to let the cows out on the corn stalks so they could at least get something to eat. The E-mail below states some more things and maybe it is a complete explanation. I have the money to buy the farm back and I want to have the cows with you. What I have told the bank is that you would just pay me a set per weaned calf price and that I (john) would provide all the machinery, feed, operating and Jim would just provide the cows, bulls and any replacement heifers. This would make both of our lives very simple. As I have stated below the land doesn't need to be rented to anyone. With the proper arrangement I will get the farming done!!!!. I have not gotten anything for my time and efforts along with members of my farming, while Troy and anybody else has been making money. We have not talked about this subject at all and I will be finishing the land financing without this discussion. I have let you down in the past but since then I have been perfect. The only reasons that anything has gone wrong is poor feed and poor farming. K-T is still owed \$15,000.00. Lorie and I don't drive around in new pickups and order people around like a big shot. I hope that you will work with us on our property, because we want to go forward with you on the cattle operation. For Lorie and I this is the time to get going again given the current opportunities that are available to us. Please read the E-mail below
thanks John

----- Original message -----

>Date: Wed, 6 Apr 2011 05:05:46 -0500 (CDT)

>From: <cowgrdpa@drtel.net>

>Subject: nd

>To: gordplastics@comcast.com

>

>Dear Jim;

>I do not have time to send a complete message to you right now but I

>want to get something to you for your thought. I have told you that I

>have the resources to buy the farm

back

>and this is true. It would still involve you and the

le

>and you making money. Jim, my wife I have cooperated and work our

ts off to make everything work. You and I

t
ed anybody but each other to make this all work! Troy is in St.
uis and he has left me with the responsibility of finding hay, along
th all of my other responsibilities and that is fine because I will
ork myself to death to get my farm back and to regain your confidence.
ave needed hay since Saturday but I have been able to get along. I
ve found hay near me that is better and cheaper than what we have
en getting. I will be giving his name to you and we will be getting
me hay this weekend. In the meantime I

ting some hay from Mike Mund. Jim I can farm all of the land. I
ve said that I want my farm back but I have
nd

er land for you to buy but I don't have time to get specific because
ave to feed a calf and then go to
k.

ave earned this right so don't do anything. I spoke

I
dd yesterday and the board had penalize me, and it will

orced against you this year, I can explain it to you, later on today,
d Todd will call you with a explanation too. We really need to

k, I know that you are very

/,
t I will be off on Friday so that I can lay out the Plan for the farm
this year. Call if you need to. Thanks John. Please do nothing
till we speak on Friday. I will send you a complete plan so that we
1 discuss it.

Gord Plastics

From: cowgrdpa@drtel.net
nt: Thursday, March 17, 2011 4:18 PM
o: gordplastics@comcast.net
Subject: nd
Attachments: 2011 Calving Worksheet.xls; Commencerability Statement 2011.pdf; Map Scans.pdf; Cattle Report.doc; Dear SVGA.doc

Dear Jim;

Here is the information that I promised you. See the following attachments. I know that you don't want to speak about this but I am planning to buy the farm back. I gave you a lot of reasons as to why, and the last reason is that I can't see you taking all of our equity. I have worked my butt off to make you money and to make the past right. I have put up with Troy and all of his BS. I hope that you know by now that I am willing to do the best job I can, and I just want you to treat Lorie and me fairly. I will work with you in an equitable and fair fashion with other cattle and other grazing. I have received nothing for my work and we have paid for a lot of expenses. I have done this in cooperation to get my farm back. I want to farm the land this year in cooperation with Ron Rotenberger. Perhaps Brian can rent the NW 1/4 of 15 for this one year.

If you want to continue working with Troy that is fine, but count me out. I have been unhappy with the quality of hay that he's delivered this winter. He also did a poor job of farming the land last year if his yields were as low as he claims. Ron Rotenberger rented our land for many years and always had high yields. I think an independent soil testing service should be hired to test the soil this year and be compared to the soil tests done last year. I am very concerned about the fertility. I am also concerned that Troy has still not paid KT Irrigation from two years ago. You can talk to Ken Storm, the owner, at 701-281-9418 to confirm this.

There is some alfalfa land to rent but I need to buy my land back so that I have operating money to put up the feed. I know that you never thought that I would get the financing but it will soon be in place. I have wondered why you are talking to Nelson as it costs money, and it must mean that you have no trust in me to do anything. After losing the pipelining job through no fault of my own, it sent our lives into even more of a tailspin. All Frank wanted back was his money owed and that is what was told to everybody when Frank sold his interest to you. Warren Anderson would have bought you out completely at that time, and would have sold the farm back to Lorie and me. I had hoped that I would have done enough good to restore your confidence in my abilities, but by constantly talking to Troy and Mike Nelson it seems you have no confidence in me.

If Ron would rent his cattle operation to you and I, why would you trust me to take care of 325 cows on his permit and take care of my permit here at my house? Ron told me he will only do something with his permit if I get my land back, and that is only because he doesn't want us to lose our farm and our equity. Ron would be the one to be sort of a observation person for you, someone that you could trust. I want to make one thing very clear to you, I do want to run as many cows as possible with you. However, I am not going to do it the way it's being done now. I want to have it so that all you would need to provide is the cows and I would provide everything else for the operation.

As I told you in the last email I have been told by Lorie that if we lose this farm she is leaving. In the past I told her that you could be trusted and that we would get to buy the farm back based on Franks guarentees and the discussions that we have had. You can call Ron at 701-680- 1995. Ron is the most honest and decent person that you will ever meet. Feel free to call Lorie if you have questions at 701-680-0846.

sorry that this took longer than I thought but Lorie wanted to proof read this E-mail as well as add her thoughts
3 this affects her too. I will have the pic for you in the morning. All My Best John and Family

Gord Plastics

From: cowgrdpa@drtel.net
nt: Wednesday, June 15, 2011 1:15 PM
cc: gordplastics@comcast.net
Subject: ND Summaries

Dear Jim;

I am going to summarize the past two months on the money that we owe some people and why and some other bookkeeping subjects.

Mike Mund

I used Mike Munds pickup and trailer to hay hay home from Bill Bergs and George Pilgrims. The breakdown is this;

4 Trips to Bills @ 46 Miles @ \$3.00 per mile = \$552.00

3 Trips to Georges @ 52 Miles @ \$3.00 per mile = \$468.00 Then since the end of March sometime I have been getting diesel fuel from mike because I could fill the whole tank and this would save me time.

200 gallons diesel @ \$4.00 per gallon = \$800.00 You need to know that Mike also has done other little things for us and they were small things but the weren't to be paid for. When we sold the calves yesterday Mike bought back two of the calves that weren't bringing what I thought they should. Mike gave us the option to keep them and he would put them out on his pasture with some other yearlings or he would buy them himself and do the same thing, this will make us some money also. He is not charging us anything for this. Mike is also going to pasture the 5 bulls and the 4 cows with his cattle for the season, that will save you about \$900.00 on what should be pasture rent. These figures that I have given you are real and not inflated, you can as Ron or anybody else for that matter.

Kyle Geske

Kyle is my son-in-law and I needed to used his pickup and Mike Munds trailer to go get a last load of hay from George Pilgrim. Kyle didn't charge us anything for his trailer but to illustrate the expense of hauling I would give you this example; Katie our daughter filled the pickup at Cenex with fuel before she came to the farm. We all went to George Pilgrims to get the hay then we came back to my farm and unloaded the hay and then Katie went into Lisbon to work at the hospital where she is a nurse. The next morning she filled the pickup at Cenex on our account that you had established. It took \$80.00 to fill the pickup. My reason for this illustration is to illustrate that Mike only received \$65-75.00 for the wear and tear on his pickup and trailer which isn't much at all, and I drove the pickup and Semi all of the time except for one time when Pat McMahon drove it for us. So if you add all of this up it comes to \$1820.00, I do think that Mike should get \$2,000.00 for his efforts, but that is your call.

Todd Anderson

As I explained to you, there was a cow and 4 yearlings that got over the fence with Todd's cattle and then we got them back and then they went back again so rather than keeping on getting them back we left them there until Todd went to pasture and then he hauled the yearlings over to my place and then Mike Mund hauled the wild one to Sisseton and you got the check for that one. Todd also has helped us with his 4 wheelers with the cows. He also went out into the pasture and fixed fence so that the cows could go to pasture, I didn't have a way to get around the pasture so Todd paid his hired help to go in my place. So what Todd feels he is owed would be as follows;

5 Head for 60 days @ \$2.00 = \$600.00

4 Hours on the 4wheeler @ \$15.00 = \$60.00

Total \$660.00

I spoke with Ron about money for him and his crew that came over to work cattle. I told him that I felt that he should get \$75.00-100.00 per person and there were 4 people and then \$100.00 for the 3 4-wheelers that we used to chase the cattle out to pasture. He stated that he would discuss this with you.

Lorie and I were also there and Lorie prepared a meal for all of us before we drove the cattle out to the pasture.

I don't want to change gears on you but the bank is coming out for a farm visit for the land loan and I am going to meet with the Youngs who own the 320 acres to the east of my farm. You stated earlier this spring that the penalty for the

le should only be assessed on me when I buy the farm back, which made me happy that you felt that way. You also once said that they are afraid of us and I don't know about the afraid but there is group that really doesn't want to see

succeed but little do they know that I will succeed and I want you to be with me but I need to buy my farm back first, I
am paid for all of things and I have gotten paid back for some.
bill for the Beet tailings and the remainder of the vet bill and the soil tests are also being faxed to you today.
I've been working on the cow-calf numbers, I will say that we have larger calves than last year.
I have the addresses for Todd and Mike.

John Anderson
7140th Ave. SE
Fargo, ND 58060 701-680-1154

John Mund
75 75th St SE
Fargo, ND 58060 701-680-0221

There are other things that I am going to send to you but this is the most pressing at this time. The bulls will be going
today also. I work the next 4 nights from 6:00pm to 6:00am.
Have a great day John

MEMORANDUM

Date: September 21, 2012
TO: File
FROM: WCA
RE: John Finstad
File No: WCA Personal

About 5 years ago I loaned \$42,500 to John Finstad.

I also understood John owned approximately 400 acres of land and that the land had a RE Mtg on it of less than \$100,000 with a Frank Farrar and his Beresford Bank Corporation out of South Dakota.

John also owed an amount in excess of \$400,000 to a Jim Gord out of Illinois which was not subject to a real estate mortgage.

John gave me security for my obligation but that was subject to a prior lien so I have not been paid. About 4+ yrs ago John contacted me about pressure he was receiving from Frank Farrar who apparently had an option to acquire the farm if the debt wasn't paid. Farrar was threatening to take the farm. John explained he wanted me to take out Farrar and Gord and that I would receive a real estate mortgage which would be a first lien on the property.

So I said why not have Gord do the very same thing as he has more at stake and it would give Gord a better security position than he currently had.

John asked if I would contact Gord to see what his thoughts were. I contacted Gord and told him I was willing to take Farrar out of the picture but thought it made more sense if he did it since he had more at stake and would get a better security position than he currently had. Gord said he was willing to do that. I asked Gord what his intentions were as to if he simply wanted to get paid back or if he was after the farm somewhat similar to what it appeared Farrar's intentions might have been. Gord's answer was that he had no intention of owning John's land and simply wanted to get paid back and would be happy to take a real estate mortgage on the property.

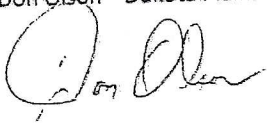
That satisfied my concerns that Gord was not going after John's land and so I contacted John and told him about our conversation. Apparently John went ahead and made a deal directly with Gord understanding that Gord was only going to get a real estate mortgage and would not be going after John's farm.

WCA/af

Dear Ransom County Court,

My name is Don Olson, I am the manager of Dakota Plains Coop in Lisbon ND, and I want the court to know that John and Lorie Finstad are paying on a bill that is the responsibility of Jim and Wendy Gord. John came to me and asked if Jim Gord could charge fuel to feed his cows on the finstad farm. John also asked if we would do some soil testing on the land owned by John and Lorie. It is a common practice for renters to test the rented land so that the correct amount of fertilizer is applied for the crops to be grown. I phone Jim Gord and I asked him about charging these things and he stated that he would pay the bill upon a phone call and a receipt from us. There were some payments made during the spring, but then there were no more payments made to the coop after the cows went to pasture and the crops were planted. After repeated attempts to collect this amount from Jim we served John and Lorie Finstad with a Small Claims Summons. John contacted me and reminded us of Jim responsibility of the bill. We had put the bill on Johns account and Jim is 700 miles away. John and Lorie Finstad have stated that they will pay the bill in installments starting on the 15th of November, 2012.

Don Olson Dakota Plains Coop



3-20-13

7/25/2013

Dear Jim and Wendy Gord;

Al and I have been notified of what you testified to in the eviction hearing in December of 2011 with respect to John and Lorie Finstad. We haven't decided if we will send this Affidavit to the courts to express our displeasure of your use of our names for your benefit. We normally wouldn't want to get involved but what you did is wrong and a lie. The following is what we may be sending to the courts to help John and Lorie prove that they are the rightful owners.

Dear Ransom County Court;

We live in the Leonard, North Dakota area and our mailing address is 15360 57th St SE. Our occupation is primarily trucking and in the past we have raised cattle and farmed. It has been brought to our attention that testimony was given in an eviction hearing with regard to John and Lorie Finstad and their farm and their residence located at 14060 Hwy 27, Lisbon, ND 58054.

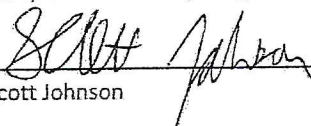
We would like to respond to the Testimony made by Jim Gord in the eviction hearing on 12/19/2011. We would like to say first that John did everything he could to help in the growing of crops, whether it was driving a tractor, starting or stopping Johns' irrigation pivots. John even would take supper out to other employees if it would be a late night. When we would work the cattle in the spring prior to the cattle going to pasture Johns wife would make us food and provided us with beverages.

Repairs to Johns' irrigation equipment and pumps and motors were done by John. With respect to the cattle, John not only provided the money for a lot of the operating expenses without reimbursement from Jim, for a majority of the time, but he also did all of the work associated with the care, maintenance and calving of the cows for no compensation while we were paid for any of our efforts. In one instance John gave us (Scott and Al Johnson) a 1st calf heifer to replace one of the cows that Jim Gord had bought from us to satisfy the Grazing Association rules. John didn't have to do this for us but he wanted to make it right with us and Jim Gord. The cow that died got on her back and bloated. The vet was called and it was verified, that the death was as a result from a bloat. We later bought our cows back from Jim and we got back the same number of cows. During the summer we let John use our ATV to take care of the cows, John not only took care of the cows but he took care of our ATV. John replaced the front wheel bearings when they needed replacing and John even fixed a broken leaf spring on our 5th wheel stock trailer and like the care of the cows, John did this with no compensation to himself. Another time John went out to our pasture to fix our fence and put our cattle in when we were down south truck for the wheat harvest. John also helped us work cattle in the spring and for all of this John never asked us for any money.

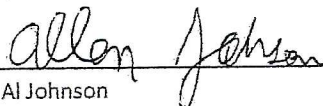
In Jims' testimony he stated that John wasn't taking care of the cattle, that is not what we ever observed in all the times we saw the cattle. The only reason for any deficiency in the care and maintenance of the cattle is strictly because of Jim Gord's neglect. John and Lorie always showed a

genuine love and care for the cattle. John was always courteous and very helpful despite the situation with respect to his farm. We would also like the court to know that we never spoke to Jim about any of these statements that Jim stated in his testimony. We were never asked for an affidavit about these claims that Jim referred to in the eviction hearing.

Our relationship was brought about by the relationship of Troy Goltz who was farming the land for Jim Gord. In the beginning of 2011 there was a change in the relationship between Jim and Troy so we really didn't have anything to do with the cattle after that.



Scott Johnson



Al Johnson

FROM THE DESK OF
WARRENN C. ANDERSON
46675 State Highway 28
Morris, MN 56267
(320) 760-2781 cell
warrenn@hometownsolutions.net

December 1, 2014

Jim Gord
4450 E. Sandwich Road
Sandwich, Ill 60548

RE: John Finstad

Dear Jim:

You and I spoke on the phone quite a number of years ago regarding the John Finstad matter. John has asked me to write a letter to you memorializing my recollection of that phone call as best I am able. Maybe a little background first.

I met John about 6 years ago. I owned an interest in a credit company from whom John was trying to get funds to pay off yourself and Frank Farrar. While the credit company was unwilling to make a loan to John being he was out of their territory, they suggested John talk with me since the credit company knew I had an interest in acquiring farmland. John asked if I would pay off Frank who had a First Mortgage of about \$65,000.00 on the farmland. Then John explained to me that you had a secured second mortgage on the land for \$350,000.00 and other debt of \$175,000.00 owed to you. I called Frank up, we discussed the situation and he stated to me that he was not interested in continuing his relationship with John and simply wanted to be out of the picture. He was willing to let me take over his position for full payment. I then called you, I told you I was willing and able to take Frank out but that you seemed to be more involved and it seemed more appropriate for you to do that. I also told you this property contained John's home and that I had no interest in getting into a hassle over someone's home as this was just an interest in helping John and Lorie to get back on their feet again. You agreed and said you felt the same way, that you simply were helping out John and his wife in part because of the tough luck they had had in their life. You said your goal was not to end up with John's land or his home.

While I would have been willing and was able to take Frank and you out at the time, I felt good about your attitude and promises to me that you were not trying to take advantage of John. I followed up with John and indicated he should simply work directly with you, that your intentions were good and that you were just trying to help John out.

Page 2 continued
December 1, 2014
Jim Gord

Should you have questions regarding this letter certainly feel free to give me a call on my cell at 320-760-2781. I do not know all of what has gone on between yourself and John but I understand considerable litigation has ensued and that you have received the benefit of cattle, grain and rental income from the Finstads farm. I will be more than happy to participate in any proceedings that would aid John and Lorie in getting their property back and that I would hope that you would honor your words to me. My final comment would be that John and his wife have the opportunity to own their homestead and farmland understanding, of course, that they need to pay their just debts to you and your family.

Regards,

Warren Anderson
WCA/km

February 16, 2015

Dear Wendy and Jim,

I have wanted to visit with you for quite some time but never felt the time was right until now. First, there are several things I have wanted to say in regards to testimony presented in court. One item Mr. Nelson brought out in court was that your interest was not protected under our bankruptcy. However, I firmly believed your interest was protected under our bankruptcy conditions. One thing I insisted on during the bankruptcy was that our equity in the land be protected in the event we failed to make our payments to Frank Farrar. At the time of the bankruptcy we had several family members who had borrowed us some money, and I wanted their interests to be protected. I also was concerned about having money for a home if we ever lost the farm. We entrusted our attorney to represent our interests and believed he did so. Your first attorney, John Brakke, received in writing documentation that your interests were secured.

Another thing that came out in court testimony is that you were unhappy with how we took care of your cattle. I have to take exception with that. Jim, I remember talking to you in my kitchen about you purchasing cattle and my feelings about it. I remember telling you that I was fine with the arrangement because we would not have any financial responsibilities. I also felt we had an obligation to take care of your cattle without benefit of wages as a way to show appreciation for keeping the grazing permit active. ~~We also wanted to see you make a profit. The first year of running cattle went smoothly. Troy~~ was in charge of delivering feed and did so in a timely manner, and we had favorable spring weather that lent to a 100% calf crop. The second winter and spring became a nightmare for us. I don't know what kind of arrangement you had with Troy. We assumed he owed you money and was buying hay as a way to pay you for debts owed. However, he wasn't delivering quality hay; he was delivering ditch hay with hub caps and other kinds of garbage in it. Several cows died of hardware which we had confirmed by the veterinarian when he came out and opened up several of the cows. I also believe John had the vet call you. I'm not sure what kind of stories Troy was telling you, but he was less than honest if he was telling you that there was nothing wrong with the hay. You may not trust John's abilities, but he does recognize good feed. Then one day during the spring of 2011 when John called Troy about delivering feed, Troy stated he was no longer helping you. When John tried contacting you, you would not return his calls. Because there was no feed or money to purchase feed, we had to turn the cattle out on the half section to forage for corn in the snow. In the meantime John was begging neighbors for feed. I watched my husband cry as he watched your cattle go hungry and begin to abort their calves. Once the grass greened up that spring it was impossible to keep hungry cattle confined. I was contacted by the sheriff one day at school and had to leave work to help get the cattle in. Jim, I believe you let us down at this time. I really wish I knew what you were thinking. As agreed upon, the cattle had always been your financial responsibility not ours. As it turned out we did cover many of your cattle expenses over that year and a half period, from veterinarian expenses, to repairs, to paying the electricity to water the cattle, to hiring people to help work cattle, as well as other miscellaneous costs.

At the eviction hearing I believe the judge favored your side because he bought into the story that you needed to put a farm manager on the farm to comply with the grazing rules. I find it ironic that no one has lived on the farm to care for the cattle since we left three years ago, but we never left your animals alone for one night in the almost two years that we cared for them. It's a small community here in Lisbon, and we know that Ron is not running the cattle operation on the farm even though the permit is in his name. Jim, you also stated in court that John was interfering with the farming operation. Yes, John drove tractor several times for Troy in the spring and ran the irrigators during the summer months so Troy wouldn't have to make special trips to Lisbon. These were favors Troy asked of John, and John was more than willing to help. I will say that John expressed his concerns to me on many occasions of

his belief that Troy was possibly taking advantage of you financially. One example that comes to mind was during the fall of 2010 when Troy was custom combining your corn. Troy was hauling your wet corn to Leonard to dry at his facility and then hauling the corn back to Sheldon Elevator to sell when the elevator wasn't even discounting the corn at the harvested moisture. When John would call you about the different things he saw happening on the farm you may have viewed it as interference, but it was his only way of keeping you informed.

Another statement from Mr. Nelson during court proceedings was his belief that we were only interested in getting the farm back because land values had gone up. Purchasing the farm was a lifetime dream of ours. John worked his ass off for twenty five years to make improvements. During that time he also worked off the farm to help with the farming expenses. We never so much as took a vacation together, and John never bought anything extra for himself. (I don't think Troy Goltz could say the same during the time he owed you money.) We sacrificed everything to keep the home we raised our children in. It may not have seemed like much to you, but it was our home. I won't even go into the feelings we have about the burning of our mobile home, a structure whose title is in our name. No amount of money, or other piece of land, can replace the love we have for our farm. Even after the eviction, we went out to the farm to mow because it was too hard seeing everything go to hell.

The main reason that I am writing is that I think it is time to address the issue of debt owed to you and fairness owed to us. We failed in our payments, and you went back on your word to work with us. You had a chance to be paid off by another investor, Warren Anderson. Did you really plan to work with us, or were you hoping to take the farm at that point? ~~We did have two banks, Dakota Plains Credit Union and the Bank of North Dakota, who were interested in helping to finance the farm in the fall of 2011 as a means to pay you off. When John told you of this you told him you couldn't work with him, and shortly after that we were evicted from the farm. John and I also talked to Ron that fall and asked him to step back from the situation so that we could try to work with you. Ron told me he was concerned for your cows. I believe he was more concerned about stepping in to rent the farm and getting his stepson, Adam Johnson, a job. John and I each have a \$210,000 judgment that remains on our credit reports. It was always our intention to take care of this debt when we refinanced the farm. The Bank of North Dakota is stilling willing to work with us to finance the farm provided a dollar amount can be submitted to them. We have been working with Bob Humann, Senior Vice President of the Bank of North Dakota, should you wish to verify this.~~

To protect our interests, John and I filed a breach of contract civil lawsuit in federal court. We didn't want to go this route, but felt we had no other choice. We are not willing to walk away from everything we worked so hard for including the equity we accumulated over a 25 year period. Wendy and Jim, it was always our intention to pay our debt to you, and we had made arrangements to do so with the help of Warren Anderson in 2009 and again in the fall of 2011 with Dakota Plains Credit Union and the Bank of North Dakota.

I pray that you have a change of heart and would be willing to talk to John and me so we can honor the debt owed to you and negotiate a way to get our farm back. I can't think of one **good** reason why you would want to own land in North Dakota or keep us from our home. Randy Panzer is willing to act as a mediator. We just want to see this matter settled in a way that is fair to all of us and doesn't involve more legal fees. If you don't want to contact us directly, please let Randy know what your decision is. I think you owe us that much.

Sincerely,

July 9, 2017

Dear Randy

Thank you for being an ear for John. As I know, it is difficult to hear John talk about the farm over and over again. Truly, it totally consumes him and becomes wearing for everyone concerned. If we had lost the farm to a traditional foreclosure it would have been difficult but easier to accept, at least on my part.

When we went through the bankruptcy it was I who advocated for a clause to be included for the protection of those people, family and friends, who had borrowed us money to keep the farm operational. In the case of a foreclosure the land was to be sold, and we were to receive any money left over after paying off the lender. The equity in our farm would have provided us the ability to pay off our debts to the people who had supported us. What is difficult to bear is that we have let people down because we did not get the equity out of our land. I feel the legal system failed us on that account by not recognizing our bankruptcy agreement.

I am truly thankful for your willingness to speak with Jim on our behalf. We have tried to make one contact by phone and later sent a letter only to have it returned unopened. Since Jim and Wendy are unwilling to have contact with us, it seems an intermediary is needed. I recognize that you contacting Jim and Wendy will need to be done on your time table, not John's or mine. I don't have my hopes up that Jim will agree to the sale of the farm as much time has passed and it wouldn't benefit him financially. I don't think that a man of character would have stolen a half million dollars of equity from a family and then leave them homeless and destitute, not to mention the piles of bills he's tried to pass off onto us. We both know that John is precariously holding on to the belief that Jim will have a change of heart. It is the only thing that keeps him going.

You may not be aware of the fact that Jim has a judgment on John and one on me for \$240,000. I'm wondering if he thought we owed him \$480,000 at the time the judgment was put in place which is under but an amount close to what we thought we owed him. Unfortunately the judgments remain in place which is something I hope you could address with Jim. I think that Jim has been more than compensated for what we borrowed from him and that he needs to dismiss those judgments against us.

There is more that I could say, but I feel you have been more than supportive and don't need to be burdened with our problems. Thank you for your support.

Sincerely,
Lorie Finstad

§ 120.2 11 U.S.C. § 1327(a): Binding Effect on Creditors and Debtors

Revised: October 8, 2010

CASES UPDATED: January 24, 2020

Cite as: Keith M. Lundin, LUNDIN ON CHAPTER 13, § 120.2, at ¶ ____, LundinOnChapter13.com (last visited _____).

Section Content

Updater Cases (267)

[1] 11 U.S.C. § 1327(a) states clearly: "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan and whether or not such creditor has objected to, has accepted, or has rejected the plan."¹ "[B]ind" means "to put under . . . legal restraint, or contract . . . to be obligatory."² Section 1327(a) is a strong statement: The terms of a confirmed plan are legal obligations of the debtor and all creditors without regard to whether the plan provides for the creditor's claim and without regard to whether the creditor participated in the confirmation process.³

[2] The confirmation order defines the rights of creditors against the debtor and the debtor's property, displacing prepetition contracts, court orders, state law and the "equities" of prepetition events.⁴ For example, a creditor with a contract right to receive \$200 per month for the installment purchase of a car is bound by confirmation to accept what the plan proposes to pay for the car without regard to the prepetition contract.⁵ Unsecured claim holders are entitled to nothing more (or less) than what the plan provides in full satisfaction of all prepetition rights to payment from the debtor. Some courts have described the effect of confirmation of a Chapter 13 plan in terms similar to those used to describe the effect of a Chapter 11 confirmation—the making of "a new agreement between the debtor and the creditor with a new obligation to be paid in the manner provided for by the terms of the plan."⁶ The confirmed Chapter 13 plan controls the debtor-creditor relationship unless and until the plan is modified or the creditor is relieved of its effects. This binding effect is in some respects even more compelling than a new contract and is reciprocally enforceable by the debtor and all creditors.⁷

[3] The fundamental binding effect of confirmation under § 1327(a) has been honored in a vast number of reported decisions. If notice is adequate,⁸ the creditor that fails to object to confirmation and then to appeal an adverse decision⁹ is bound by the confirmed plan even if it contains provisions that are inconsistent with the Code that could have been defeated by a timely objection.¹⁰ A confirmed plan cannot be collaterally attacked after confirmation under the guise of other contests such as a request for relief from the stay or a motion to dismiss. Debtors and trustees are just as bound by confirmation as creditors—confirmation precludes debtor or trustee behavior that is inconsistent with the plan.¹¹

[4] Many courts describe the effect of confirmation as res judicata with respect to all issues that were or could have been litigated at or before the hearing on confirmation.¹² This resort to judge-made principles of preclusion is usually not harmful, but § 1327(a) is a comprehensive statutory declaration of binding effect that is not dependent on or limited by the conventional rules for preclusion. For example, ordinarily the preclusive effect of a judgment can be altered by contract or agreement between the parties to the original judgment. However, it has been held that the terms of a confirmed Chapter 13 plan cannot be altered by private agreements between the debtor and creditors.¹³

[5] Perhaps more importantly, the statutory formulation of binding effect in § 1327(a) is broader than the res judicata effect of an ordinary judgment in the federal courts. A confirmed plan binds even creditors that are not provided for by the plan and without regard to whether the creditor responded to the proposed plan by acceptance or rejection.¹⁴ As is demonstrated below,¹⁵ some courts have misapplied res judicata to find limitations on the effect of a confirmed plan that fails to provide for a creditor when § 1327(a) clearly states that such a plan is binding even on a creditor that is not provided for by the plan.¹⁶

[6] The Ninth Circuit in *Espinosa v. United Student Aid Funds, Inc.*,¹⁷ explained the important distinction between the res judicata effect of a confirmation order and the statutory effect of confirmation under § 1327(a). Res judicata applies to "giving the judgment in the bankruptcy case preclusive effect in another case."¹⁸ When the context is enforcement of the confirmation and discharge orders in the bankruptcy court that issued them, res judicata is not in play; rather, the binding effect of confirmation is often realized, as it was in *Espinosa*, through the discharge injunction:

A discharge injunction does not operate by way of res judicata; it is, rather, an equitable remedy precluding the creditor, on pain of contempt, from taking any action to enforce the discharged debt. . . . A discharge injunction could also have res judicata effect, if the creditor were to try to enforce the debt by bringing a post-discharge lawsuit, but the discharge injunction prevents him from even commencing the second suit where the res judicata issue could be litigated. There was no second lawsuit in our case.¹⁹

Examples of the binding effect of confirmation under § 1327(a) are plentiful. The confirmation order is a binding determination of the debtor's eligibility for Chapter 13, precluding a postconfirmation motion to dismiss on the ground that the debtor was ineligible from the beginning of the case.²⁰ It has been held that the confirmation order in a Chapter 13 case is res judicata with respect to the subject matter jurisdiction of the bankruptcy court.²¹ Confirmation may determine what is included in property of the estate.²² Confirmation precludes relief from the stay when the creditor unsuccessfully objected to confirmation on the same grounds.²³ A creditor cannot use a postconfirmation motion for relief from the stay to collaterally attack the confirmed plan if the creditor failed to object or appeal the order of confirmation, notwithstanding that the confirmed plan contains provisions the creditor could have defeated with a timely objection.²⁴ Even a creditor that was granted relief from the stay before confirmation is bound by the confirmed plan to accept the treatment provided in the plan.²⁵ A creditor excepted by statute from the automatic stay—for example, a creditor attempting to collect child support that falls within the broad exception in § 362(b)(2)²⁶—is still bound by the confirmed plan and risks sanctions for violating the confirmed plan by continued collection efforts. The Eleventh Circuit held the Florida Department of Revenue in contempt for violation of a confirmed plan that provided for child support arrearage when the Department attempted to collect more than the plan provided.²⁷

[9] Confirmation is a binding determination that the debtor satisfies the disposable income test, thus some courts have held that confirmation precludes a creditor's postconfirmation motion to require the debtor to commit future tax refunds to the trustee.²⁸

[9] Because good faith is one of the conditions for confirmation in § 1325(a), confirmation precludes relitigation of the debtor's good faith on a motion to dismiss.²⁹ A creditor that neglected to raise a best-interests-of-creditors-test objection before confirmation is precluded from raising that objection collaterally, for example, in opposition to a debtor's motion to modify the plan after confirmation.³⁰ The confirmation order is preclusive of all "adequate protection" arguments a creditor might have made under § 361 of the Code.³¹ Confirmation of a plan that is specific with respect to the value of collateral,³² the payment or rate of interest and other rights of secured claim holders is binding on lienholders notwithstanding the filing of an inconsistent proof of claim.³³ ~~A confirmed plan that treats a lease as a disguised security agreement binds the creditor to accept the present value of its collateral through the plan.³⁴ Plan confirmed without objection that treated "contract for title" as an ordinary secured claim trumps a postconfirmation proof of claim asserting that the contract is executory and can only be assumed under § 365.³⁵~~

[10] Assumption of a lease in a confirmed plan has binding effects. For example, when the plan assumed a vehicle lease to be paid directly by the debtor, the lessor was precluded to later claim an administrative expense upon the debtor's default.³⁶

[11] A pawnbroker is bound by confirmation of a plan that treated the pawn transaction as an ordinary secured claim notwithstanding that an objection to confirmation would have defeated the plan.³⁷

[12] All creditors are bound by the order of payment of claims if fixed in the confirmed plan.³⁸

[13] The U.S. Court of Appeals for the Third Circuit held that failure to object to confirmation is fatal to a creditor's objections to a plan that fails to provide the present value required by § 1325(a)(5).³⁹ Similarly, the U.S. Court of Appeals for the Seventh Circuit held that confirmation binds a secured claim holder to accept surrender of part of its collateral in full satisfaction of its secured claim notwithstanding that the property surrendered is worth less than the amount the creditor was entitled to had it timely objected to confirmation.⁴⁰ When the debtor's car is destroyed after confirmation and insurance pays the value, § 1327(a) generally limits the lienholder to the balance of its secured claim, not the entire proceeds of the insurance policy.⁴¹

[14] The U.S. Court of Appeals for the Ninth Circuit held that a taxing authority's failure to object to confirmation left it bound by a plan that redeemed property from a tax foreclosure judgment, "[e]ven assuming that the order confirming the plan was in error."⁴² The U.S. Court of Appeals for the Tenth Circuit held that res judicata and § 1327(a) prevented the IRS from ransoming its tax lien for more than the precise amount of its allowed secured claim fixed by the order of confirmation: "Absent timely appeal, the confirmed plan is res judicata and its terms are not subject to collateral attack. . . . [T]he IRS was entitled to no more and the [debtors] were obligated to pay no less than the amounts set out in the Plan and confirmation order."⁴³ A taxing authority that needs tax returns from the debtor before it can determine whether to object to confirmation must act before confirmation to get those returns because confirmation will severely limit options for opposing the plan.⁴⁴ Property tax creditors are bound by confirmation. For example, when the plan paid less interest than state law or § 511⁴⁵ required, the purchaser of a tax claim was bound by its failure to object before confirmation.⁴⁶

[15] Confirmation orders can be binding with respect to the liability of the debtor and, on strong facts, can affect the rights of creditors against third parties. For example, a plan that expressly provided "the alleged secured claim of Factors Funding, Inc. is hereby discharged as there is no underlying obligation" precluded allowance of any claim filed by Factors Funding, Inc.⁴⁷ Confirmation of a plan that substituted the debtor's daughter as the borrower on a car note and provided that the underlying debt would be paid "outside the plan by the debtor's daughter" barred the creditor's claim against the debtor when the daughter surrendered the car after confirmation.⁴⁸ A creditor is bound by a provision prohibiting action against a cosigner notwithstanding that the confirmed plan is broader than the statutory protection of cosigners in § 1301.⁴⁹ An assignee in privity with the original lender is bound by a confirmed plan.⁵⁰

[16]

Creditors are bound by plan provisions that preserve avoidance actions. For example, notwithstanding controversy about the standing of Chapter 13 debtors to bring avoidance actions,⁵¹ when the plan specifically reserved the debtor's right to bring such an action, the defendant is bound by confirmation.⁵²

[17] Real estate mortgages and liens are affected in many ways by confirmation orders in Chapter 13 cases.⁵³ A properly noticed secured creditor that fails to object to confirmation may be deemed to have accepted the treatment of its claim.⁵⁴ The U.S. Court of Appeals for the Seventh Circuit and several other courts have held that the failure to object to confirmation binds the mortgage holder to accept payment in full without interest when the plan calls for payment of the secured claim without interest.⁵⁵ A mortgage holder is bound by a confirmed plan that bifurcated its claim and modified the unsecured portion when the mortgage holder filed a claim but failed to object to confirmation.⁵⁶

[18] Notwithstanding the Supreme Court's declaration in *Nobelman v. American Savings Bank*⁵⁷ that § 1322(b)(2) prohibits bifurcation of an undersecured claim that is secured only by real property that is the debtor's principal residence,⁵⁸ it is widely held that a wholly unsecured home mortgage is not protected from modification.⁵⁹ *Nobelman* did not address whether a mortgage holder is bound by failure to object to confirmation of a plan that bifurcates its claim in violation of § 1322(b)(2). Several reported decisions conclude that an undersecured mortgage holder is bound by confirmation of a plan that bifurcates its claim when the creditor sits on its rights after proper notice of the plan.⁶⁰ Discussed elsewhere in detail,⁶¹ even a plan provision that impermissibly modifies a mortgage is binding, and the mortgage creditor must apply payments according to the plan when the creditor fails to object to confirmation.⁶²

[19] Although not completely without controversy, many courts have held that confirmation of a plan can strip a wholly unsecured mortgage without the separate filing of an adversary proceeding.⁶³ In *SLW Capital, LLC v. Mansaray-Ruffin (In re Mansaray-Ruffin)*,⁶⁴ the U.S. Court of Appeals for the Third Circuit distinguished lien stripping from attacking the validity of a mortgage, stating that "the concept of 'lien stripping' is related to the valuation of collateral, not the validity of a lien." While an attack on validity requires an adversary proceeding under Bankruptcy Rule 7001(2), the *Mansaray-Ruffin* court concluded that stripping an unsecured mortgage did not. Applying this distinction, a bankruptcy court in the Third Circuit concluded that a Chapter 13 plan can reclassify the claim of a wholly unsecured mortgage without the filing of an adversary proceeding.⁶⁵

[20] When the plan cures default and maintains payment on a long-term mortgage under § 1322(b)(5),⁶⁶ the mortgage holder is bound by confirmation to accept the monthly payment specified in the plan notwithstanding that the contract required a different amount and a timely objection to confirmation would have prohibited the change in terms.⁶⁷ A plan that fails to pay mortgage arrearages or that provides for arrearages in an amount different than that claimed by the mortgage holder is binding absent timely objection to confirmation.⁶⁸ A confirmed plan may obligate the mortgage holder or servicer to notify the debtor and trustee of escrow or other changes in mortgage payments.⁶⁹ A mortgage holder that fails to object to confirmation is precluded from attacking a plan provision for payment of arrearages without interest, notwithstanding Supreme Court authority entitling the creditor to interest on defaults cured through the plan.⁷⁰

[21] A prepetition foreclosure sale won't help a mortgagee that fails to object to confirmation of a plan that continues payments as if nothing happened before the petition—the foreclosing creditor is bound to accept payments for the life of the Chapter 13 plan.⁷¹ A confirmed plan providing "Debtors hereby rescind said transaction with Household Finance Corporation III" is binding with respect to rescission of a home mortgage held by HFC.⁷²

[22] Postconfirmation relief from the stay is not necessarily going to restore happiness for the mortgage holder that failed to object to an unfavorable plan. As explained by the U.S. Court of Appeals for the First Circuit in *Carvalho v. Federal National Mortgage Ass'n (In re Carvalho)*,⁷³ a confirmed plan that bifurcated an undersecured mortgage that was not protected from modification by § 1322(b)(2)⁷⁴ "is not annulled by the mere act of granting relief from the automatic stay."⁷⁵

[23] The binding effect of confirmation applies with full force to claims entitled to priority⁷⁶ and full payment⁷⁷ through the plan. For example, many reported cases recognize that taxing authorities are bound by § 1327(a) to accept the payment of priority claims provided by the plan even when inconsistent with a timely filed proof of claim, so long as notice to the government was adequate.⁷⁸

[24] Section 1327(a) states that the binding effect of confirmation extends to each creditor "whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted or has rejected the plan."⁷⁹ Even a plan that is entirely silent with respect to a creditor or class of claims is binding unless the creditor objects to confirmation or appeals the order of confirmation.⁸⁰ Silence in a plan with respect to retention of liens can bind the lienholder to a confirmed plan that limits or eliminates altogether the creditor's prepetition lien.⁸¹

[25] The binding effect of § 1327(a) applies with full force to modification of confirmed plans, provided that modification is properly noticed.⁸² Courts sometimes view plan modification targeted at a specific claim as the functional equivalent of a claim-objection. Conflicting views with respect to plans that are inconsistent with filed claims are discussed elsewhere.⁸³

[26] Until recently the U.S. Courts of Appeals for the Ninth and Tenth Circuits had reported especially clear statements of the binding effect of confirmation of Chapter 13 plans in cases dealing with the discharge of student loans; the Tenth Circuit retreated,⁸⁴ but the Ninth Circuit stayed the course.⁸⁵ Most educational loans are not dischargeable in a Chapter 13 case unless the debtor files an adversary proceeding and proves the undue hardship exception to the nondischargeability of student loans under § 523(a)(8).⁸⁶ At about the same time, enterprising debtors' lawyers in the Ninth and Tenth Circuits had the same

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When State Law Conflicts with Federal Law, Bankruptcy Debtors May Lose



The United States is a nation of laws. Many, many laws. We have city laws, county laws, state laws, and federal laws. The enforcement of each law is constrained by a jurisdiction. Federal laws typically apply everywhere within the United States; state laws only within the state borders. So, what happens when a state allows certain conduct within its borders that is illegal under federal law? *And, more important as a practical matter, is a person or company entitled to the benefits of the federal bankruptcy laws when engaged in a permitted state activity that is a federal crime?*

This uncommon situation has been addressed in several recent bankruptcy cases involving medical marijuana operations. Currently, 23 states have legalized medical marijuana, six have decriminalized marijuana use, and the states of Colorado and Washington have legalized recreational cannabis use. This despite the federal law that makes marijuana use illegal for any reason, even with a medical prescription. The Supreme Court held in the 2005 case of *Gonzales v. Raich* that Congress has the right to outlaw medicinal cannabis, thus subjecting all patients to

compliance with state law, he is breaching the federal Controlled Substances Act. The debtor, a marijuana distributor and producer, sought Chapter 7 bankruptcy protection and listed \$556,000 in unsecured debt. He also identified roughly 25 marijuana plants, each valued at \$250, which could have been liquidated to pay creditors, but the trustee could not take control of the plants without breaking federal law. The bankruptcy judge stated that that the case could not be converted to a Chapter 13, because the bankruptcy plan would be financed "from profits of an ongoing criminal activity under federal law." The judge added, "Violations of federal law create significant impediments to the debtors' ability to seek relief from their debts under federal bankruptcy laws in a federal bankruptcy court."

Each bankruptcy case implicates both federal and state laws. If you are contemplating restructuring your debts through bankruptcy, speak with an experienced attorney to discuss your situation.

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**Senate Political Subdivisions Committee
Hearing on SB 2223**

Testimony from North Land Title Association

Nick Hacker – Legislative Chair

nick@thetitleteam.com

(240) 688-2210

Chairman Burckhard, Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association as well as President of North Dakota Guaranty and Title Co.

Our industry provides abstracting, title insurance and real estate closing services in every county of the state. A part of these services is to ensure buyers acquire real property as they expect, free and clear of liens and encumbrances as well as unknown ownership rights or interests. We are also firm believers in real property rights. Included in those rights is to borrow against real estate and in return grant a mortgage (mortgagor) to the lender (mortgagee). When borrowers fail to meet their obligations under the promissory note for the loan, the lender may exercise their rights under the mortgage.

The bill before you, albeit its intent, requires a judgment of foreclosure which effectively eliminates the ability for the lender and borrower to amicably resolve their differences through a deed in lieu of foreclosure. The ability to utilize a deed in lieu of foreclosure is a tool that is significantly beneficial to the borrower. It is the borrower's choice to remedy, the sum or all of, the default by conveying the real estate directly to the lender instead of following the cumbersome, expensive, and sometimes humiliating process of foreclosure.

The bill also has significant unintended consequences that will cause Quiet Title Actions. Every time title is examined, if a deed in lieu is found we will need to additionally search the civil court records for a corresponding foreclosure judgement and then ask the Clerk of Court to provide a copy of the judgement. If one does not exist, we will then require a foreclosure action to commence even though the mortgagee no longer has an interest in the property. If they will commence the action, then the property goes to sheriff sale per the foreclosure judgement, which could result in an additional deed to a successful bidder that may be different than the mortgagee from the deed in lieu, two parties claiming ownership. This will likely result in a contested quiet title action. Contested quiet title actions can take years and significant attorney's fees to resolve.

The deed in lieu of foreclosure ability under the statute should be maintained to allow borrowers and lenders to resolve their differences prior to foreclosure. If this bill is passed, we would likely be better off if the entire deed in lieu of foreclosure statute is repealed in its entirety. Please give this bill a do not pass recommendation.

Thank you.

**Senate Political Subdivisions Committee
Hearing on SB 2223**

Testimony from North Land Title Association
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Chairman Burckhard, Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association as well as President of North Dakota Guaranty and Title Co.

Our industry provides abstracting, title insurance and real estate closing services in every county of the state. A part of these services is to ensure buyers acquire real property as they expect, free and clear of liens and encumbrances as well as unknown ownership rights or interests. We are also firm believers in real property rights. Included in those rights is to borrow against real estate and in return grant a mortgage (mortgagor) to the lender (mortgagee). When borrowers fail to meet their obligations under the promissory note for the loan, the lender may exercise their rights under the mortgage.

The bill before you, albeit its intent, requires a judgment of foreclosure which effectively eliminates the ability for the lender and borrower to amicably resolve their differences through a deed in lieu of foreclosure. The ability to utilize a deed in lieu of foreclosure is a tool that is significantly beneficial to the borrower. It is the borrower's choice to remedy, the sum or all of, the default by conveying the real estate directly to the lender instead of following the cumbersome, expensive, and sometimes humiliating process of foreclosure.

The bill also has significant unintended consequences that will cause Quiet Title Actions. Every time title is examined, if a deed in lieu is found we will need to additionally search the civil court records for a corresponding foreclosure judgement and then ask the Clerk of Court to provide a copy of the judgement. If one does not exist, we will then require a foreclosure action to commence even though the mortgagee no longer has an interest in the property. If they will commence the action, then the property goes to sheriff sale per the foreclosure judgement, which could result in an additional deed to a successful bidder that may be different than the mortgagee from the deed in lieu, two parties claiming ownership. This will likely result in a contested quiet title action. Contested quiet title actions can take years and significant attorney's fees to resolve.

The deed in lieu of foreclosure ability under the statute should be maintained to allow borrowers and lenders to resolve their differences prior to foreclosure. If this bill is passed, we would likely be better off if the entire deed in lieu of foreclosure statute is repealed in its entirety. Please give this bill a do not pass recommendation.

Thank you.

SENATE BILL 2223
CREATION OF CH. 35-03, N.D.C.C.
DEED IN LIEU OF FORECLOSURE

[SB 2223](#) proposes the creation and enactment of a new section to chapter 35-03 of the North Dakota Century Code, relating to a deed in lieu of foreclosure. It reads:

If a deed in lieu of foreclosure is granted by a mortgagor to discharge a mortgage obligation to a mortgagee, the title to the real property that is the subject of the deed in lieu of foreclosure may not be transferred to the mortgagee until a judgment of foreclosure is entered, regardless of whether the deed in lieu of foreclosure was delivered to the mortgagee and recorded in the office of the recorder by the mortgagee before the judgment of foreclosure was entered.

There are several issues with this proposed statute, fully described herein.

ISSUE #1. THE PURPOSE OF A DEED IN LIEU OF FORECLOSURE IS TO AVOID A JUDICIAL FORECLOSURE ACTION; THIS BILL REQUIRES A JUDGMENT IN ALL CASES, MEANING IT REQUIRES AN ACTION.

A deed in lieu of foreclosure is an offer by the mortgagor to deed the property to the mortgagee “in lieu of” – or instead of – the mortgagee commencing a foreclosure action against the mortgagor.¹ As with any other deed, the property is ordinarily conveyed upon delivery of the deed by the grantor/mortgagor and acceptance by the grantee/mortgagee.²

The bill is contrary to this entire notion. It prohibits the transfer of title prior to a judgment of foreclosure being entered. To have a judgement of foreclosure entered, the mortgagee will need to bring an action in district court for the foreclosure of the mortgage under Ch. 32-19, N.D.C.C. In other words, even where a mortgagor offers to deed the property to the mortgagee in lieu of a foreclosure action, the mortgagee will be forced to commence a foreclosure action in order to have the title actually transferred. This makes the concept of a “deed in lieu of foreclosure” moot.

¹ See *CUNA Mortg. v. Aafedt*, 459 N.W.2d 801, 802 (N.D. 1990) (referring to the mortgagor’s offer “to deed the properties back to [mortgagee] in lieu of the foreclosure actions”); *Volk v. Wisconsin Mortg. Assur. Co.*, 474 N.W.2d 40, 42 (N.D. 1991) (referring to mortgagor’s offer to give the mortgagee “a quitclaim deed to the property in lieu of a foreclosure action”). See further *In re Anderson*, No. 95-15419-SSM, 1997 WL 1102027, at *6 (Banker. E.D. Va. Aug. 29, 1997) (“As its name implies, a deed in lieu of foreclosure is a voluntary deed conveying mortgaged property to the secured party as an alternative to the proceedings that would otherwise be required under applicable state law to foreclose the owner’s equity of redemption.”).

² See *CUNA Mortg.*, 459 N.W.2d at 803-04 (“Under North Dakota law, conveyance by deed takes effect upon delivery of the deed by the grantor...[I]t is well settled that ‘acceptance by the grantee is an essential part of a delivery.’”).

ISSUE #2. THE POLICY BEHIND THIS BILL IS UNCLEAR: BORROWERS OPT FOR DEEDS IN LIEU OF FORECLOSURE TO AVOID THE TIME, EXPENSE, AND HUMILIATION OF A FORECLOSURE ACTION.

As stated in [Issue #1](#), the bill will require a judgment of foreclosure (and attendant foreclosure action) in every case. A judicial foreclosure action has several time delays involved. For instance, a Notice Before Foreclosure must be served on the mortgagor at least 30 days before an action may even be commenced. Even if the mortgagor/defendant agrees that the mortgagee should have the right to foreclose, it will have 21 days to answer and the mortgagee will need to comply with other timelines required of a default judgment or summary judgment. Thus, obtaining a judgment of foreclosure will take an exorbitant amount of time even where it is clearly the intent that the mortgagee obtain title to the property upon transfer and recordation of the deed.

Deeds in lieu not only “alleviate a burden on the courts but...spare [the mortgagor] the adverse publicity which accompanies a foreclosure action.”³ A mortgagor will no longer be able to avoid having a judgment docketed against him or her (which is a matter of public record). If publication of the sale is required ([see Issue #3](#)), this will add to further public humiliation.

Overall, it is unclear what the overarching policy concern is that justifies the curtailing or elimination of a significant option for borrowers who seek to avoid mortgage foreclosure actions. Courts have repeatedly upheld deeds in lieu of foreclosure as fair, “especially...where a sophisticated commercial borrower is involved, where there is no disparity in bargaining power and negotiating strength, where the borrower is represented by knowledgeable counsel, where there is an acknowledged loan default, where there is little or no equity in the mortgaged property, and where there is actual and meaningful consideration for the deed in lieu of foreclosure such as a forbearance agreement or a release of personal liability.”⁴ Deeds in lieu further “valid policy considerations...including out-of-court settlements of disputed matters and avoidance of the time and expense (and publicity) of protracted and contested foreclosure and bankruptcy proceedings.”⁵

ISSUE #3. A JUDGMENT OF FORECLOSURE REQUIRES THE SHERIFF TO SELL THE PROPERTY TO SATISFY THE DEBT; TITLE IS NOT TRANSFERRED UNTIL AFTER THE REDEMPTION PERIOD.

SB 2223 says that title to the real property may not be transferred to the mortgagee until a judgment of foreclosure is entered. A judgment of foreclosure directs the sheriff to sell the property, not that the title of the property be transferred from the mortgagor to the mortgagee.⁶ Thus, it does not make sense that the title would not be transferred until a judgment of foreclosure has been entered.

³ *CUNA Mortg.*, 459 N.W.2d at 804; *see also Volk*, 474 N.W.2d at 42 (stating that the mortgagor offered the deed in lieu so he “wouldn’t have to go through the embarrassment and suffer the damage which a foreclosure action would cause”).

⁴ *See In re Greene*, No. 06-33611-KRH, 2007 WL 1309047, at *5 (Bankr. E.D. Va. May 3, 2007).

⁵ *Id.*

⁶ *See* N.D.C.C. § 32-19-06 (In any action for the foreclosure of a real estate mortgage, the court shall render judgment for the amount found to be due and the costs of the action, and shall order a sale of the premises to pay the amount adjudged to be

Furthermore, the sheriff's sale directed by a judgment of foreclosure must be set up in accordance with N.D.C.C. § 28-23-04, which requires that a Notice of Sale be published for 3 weeks in the county newspaper. At the sale, anyone can bid on the property; not just the mortgagee. Following the sale, the owner of the property generally has 60 days to "redeem" or buy back the property (depending upon whether the property is agricultural or non-agricultural land). The transfer of title does not occur until the redemption period has expired and the Sheriff's Deed is recorded.

The bill does not make it clear what is to happen after the judgment of foreclosure is entered – does this mean that a recorded deed in lieu is automatically "effective"? Or must the usual requirements – publication, sale, and redemption – be followed? If they are still required, would the statute giving the mortgagor the right to possession of and rents/income from the property during the redemption period still apply? If so, this is also contrary to the concept of a deed in lieu; one of the reasons a mortgagee takes a deed in lieu is to obtain possession of the property to control and safeguard it, even if the mortgagee still has to foreclose junior encumbrancers. Would the mortgagor be entitled to possession even if marketable title does not transfer without the foreclosure action?

ISSUE #4. IT IS UNCLEAR WHETHER THE LAST PORTION OF THE PROPOSED STATUTE IS MEANT TO GIVE THE STATUTE RETROACTIVE EFFECT.

Notice that the statute prohibits the transfer of title regardless of whether the deed in lieu of foreclosure was delivered to the mortgagee and recorded in the office of the recorder by the mortgagee before the judgment of foreclosure was entered.

Is this language meant to make this retroactive? There is serious concern with how this is meant to affect deeds in lieu of foreclosure already on record with the county recorder, especially if meant to require that actions need to be commenced for all of said deeds in lieu for all time.

One problem would be that a "deed in lieu of foreclosure" is a concept, not a formal type of deed. There may be deeds in lieu of foreclosure on file with the county recorder designated "quitclaim" or "warranty" deeds, making it impossible to tell which deeds require actions for the transfer of title.

It is also unclear whether pending sales or mortgage transactions with deeds in lieu in the chain of title now require a foreclosure before marketable title can be conveyed; or whether property with a deed in lieu in the chain of title would be unmarketable. Further, what would the remedy be for a property owner whose title is now unmarketable – a foreclosure action or quiet title action? There are a lot of unanswered questions that arise from this proposal.

due...The judgment must provide that during the redemption period the debtor or owner of the premises is entitled to possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19."); N.D.C.C. § 32-19-08 ("A sale of mortgaged premises under a judgment of foreclosure...must be made by the sheriff of [the county where the premises are situated].").



Senate Bill 2223

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota (“ICBND”)

Before: Senate Political Subdivisions Committee
Senator Burckhard, Chairman

Date: January 28, 2021

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals nearly 60 independent community banks throughout our state. ICBND opposes SB 2223 and requests a “Do Not Pass” recommendation from the committee.

SB 2223 would cause harm to both a lender and the borrower by adding unnecessary legal proceedings, time, and costs when both parties have agreed to allow a deed in lieu of foreclosure to satisfy an outstanding debt on real property secured by a mortgage. A deed in lieu of foreclosure allows lenders to work with borrowers for the best possible outcome for all parties in a private, rather than public, manner. Forcing a court order or judgement, as SB 2223 seeks to do, eliminates that flexibility.

Chairman Burckhard and members of the Senate Political Subdivisions Committee, ICBND respectfully requests a “Do Not Pass” recommendation for Senate Bill 2223. Thank you for your time and consideration.

Blaine T. Johnson
Crowley Fleck PLLP
100 West Broadway, Suite 250
PO Box 2798
Bismarck, ND 58502-2798
701.223.6585

January 28, 2021

Senate Political Subdivisions Committee
North Dakota State Legislature
Attn: Chairman Burckhard

RE: Senate Bill 2223 – A bill relating to Deed in Lieu of Foreclosure

Dear Chairman Burckhard:

I am a partner in the law firm of Crowley Fleck PLLP and have served as the Chair of the Real Property Section of the State Bar Association of North Dakota since 2017. I submit this written testimony in opposition to Senate Bill 2223.

I have reviewed the written documentation submitted by the North Dakota Banker's Association by and through Rick Clayburgh. I concur with and fully support their analysis of this disastrous bill. Rather than beleaguer the points already made, I will limit my testimony to points not already addressed.

I. Senate Bill 2223 infringes upon the rights of North Dakota citizens to contract.

First and foremost, deeds are construed as contracts in the State of North Dakota. *See Freidig v. Weed*, 868 N.W.2d 546 (N.D. 2015), *Hallin v. Lyngstad*, 837 N.W.2d 888 (N.D. 2013). A deed in lieu of foreclosure is no different. While financial aspects of a debtor's ability to repay legitimate monetary obligations may be at the forefront of a debtor's decision to enter into a deed in lieu of foreclosure, the fact of the matter is that the debtor is under no obligation to enter into a deed in lieu of foreclosure. By refusing to enter into a deed in lieu of foreclosure, the debtor may force the creditor to commence a foreclosure action to obtain the exact result that this bill seeks to make law.

Senate Bill 2223 all but eliminates a debtor's right to engage in contract negotiations with a creditor in order to facilitate the resolution of the debtor's financial predicament. The deed in lieu, when available, provides a tool that benefits both debtor and creditor. The debtor avoids the stigma of being served with a foreclosure notice, summons and complaint and the necessity of legal expenses and costs in defending the action in cases that warrant it. It avoids the embarrassment of having the debtor's name published in the newspaper notifying the community that the debtor has been foreclosed. In many cases it transitions the costs of liquidation (broker commissions, title and closing fees) from the debtor to the creditor. From a creditor standpoint, the deed in lieu provides

an option to reduce the costs of collection and the time required to litigate the foreclosure action and await the redemption period.

Furthermore, if the North Dakota legislature pushes to impose foreclosure as the only remedy available in situations where debtors have defaulted, I would fully expect financial institutions to push this body to eliminate N.D.C.C. § 28-26-04 prohibiting contractual provisions for payment of attorney's fees in collection actions and come more in line with the prevailing position of allowing creditors to recoup such fees.

II. Senate Bill 2223 is unlikely to pass muster under Article I, Section 10, Clause 1 of the United States Constitution.

Article I, Section 10, Clause 1 of the United States Constitution, more commonly known as the "Contract Clause," recognizes the right of individuals to contract. Under the Contracts Clause, states are prohibited from impairing the ability of individuals to enter into contracts. While states are permitted to create laws barring contracts which offend public policy, this particular bill is completely devoid of a legitimate public policy argument in its support.

III. Senate Bill 2223 seeks to change fundamental tenants of real property law.

It has long been the law of North Dakota, and real property law in general, that a deed is effective upon delivery of the deed by the grantor. N.D.C.C. §47-09-06 provides that "a grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor and is presumed to have been delivered at its date." This provision was first codified in 1877, prior to statehood, and has been the law of this State since. This Bill would create a direct contradiction between N.D.C.C. § 47-09-06 and the contemplated new section of N.D.C.C. Chapt. 35-03.

There is no legitimate purpose to differentiate a deed in lieu of foreclosure with respect to its effectiveness from any other form of deed and in many circumstances a "deed in lieu of foreclosure" may be reflected as a Warranty Deed, a Limited Warranty Deed, or Quit Claim Deed.

For the foregoing reasons, as well as those indicated by the North Dakota Banker's Association, I strongly urge each member of the Political Subdivisions Committee to vote no on Senate Bill 2223.

Respectfully,

A handwritten signature in black ink, appearing to read "Blaine T. Johnson". The signature is written in a cursive, flowing style.

Blaine T. Johnson

THOMASON LAW OFFICE, PC

Lyle P. Thomason

Attorney at Law

ND Bar ID Number 05738

314 Main Street
Post Office Box 896
Lisbon, ND 58054

Telephone (701) 683-3175

E-mail lpthomas@drtel.net

January 28, 2021

North Dakota State Senate
Political Subdivisions Subcommittee
State Capital
Bismarck, North Dakota

RE: I Write in Support of Senate Bill #2223

Friends,

It is appearing that the true purpose of this bill is to provide clarity and certainty to folks, farmers and otherwise, who find it necessary to file for bankruptcy relief.

During difficult financial times creditors, for the purpose of protecting any interests they may have in a debtor's property, may take title to a debtor's property further compromising a debtor's position and ability to dig themselves out of the financial hole they find themselves in.

This bill, and its intent to protect the integrity of the bankruptcy court's confirmed plan, removes the uncertainty that an anxious creditor may have regarding their interests and allows the debtor to continue operating. The bankruptcy court (trustee), with oversight of the debtor's operation, can provide an assurance to the debtor as well as all creditors, that the confirmed plan can be accomplished as agreed. This bill prevents parties from changing the confirmed plan without the bankruptcy court's knowledge and then affirming those changes through the state court.

I encourage a yes vote on Senate Bill #222. I appreciate you taking time to listen to my concerns.

Thank you,



Lyle P. Thomason

Chairman Burckhard and Senate Political Subdivisions Committee

From: Katie Paulson, McKenzie County Recorder

RE: SB 2223

Chairman Burckhard & committee members,

My name is Katie Paulson and I am the McKenzie County Recorder. I am writing testimony to oppose SB 2223 in relation to the deed in lieu of foreclosure. I am under the impression that this would require the county recorder to research if there was a judgement of foreclosure filed on the UCC system before the document can be recorded. This issue I see with adding this step is the liability is places on me as a recorder.

When a document is presented to the recorder's office to put a document on record, our job is to ensure that it meets the basic recording requirements which are in North Dakota Century Code, collect the fee, and put the document on permanent record. We do not analyze to see if the document should be recorded because it meets certain title requirements. The way I read this bill, this would mean that now on certain documents the recorder will be responsible to determine if the document "should" be recorded beyond that it meets recording requirements.

I don't believe that county recorders should be responsible for looking something up on a system that we no longer manage to make this determination. It goes beyond our normal scope of service to the people which is spelled out in statute. What happens if we miss something and record a deed in lieu of foreclosure anyway?

For all of the other thousands of documents we record for the people, we have never been required to police **if** a document **should** be recorded. A document either meets the same minimum requirements as all the other documents or it doesn't.

To me the problem is the responsibility to analyze if we are allowed to record it based off of what has been filed in a place that we have no management over, I strongly urge this committee to consider the liability that this places on the county recorder, and **DO NOT PASS** SB 2223.

Thank you for your time and consideration,

Katie Paulson, McKenzie County Recorder

Testimony prepared for Senate Political Subdivision Committee

January 28, 2021

SB 2223 Deed in lieu of foreclosure – Delivery – Transfer of title.

Chairman Burckhard and Committee Members,

My name is Carrie K Krause and I am the Wells County Recorder. I would like to take this opportunity to request a **Do NOT Pass** on **SB 2223**, a bill relating to **Deed in lieu of foreclosure – Delivery – Tansfer of title.**

The verbiage in this bill **“may not be transferred”** is a concern as who would be responsible for making sure a transfer isn’t made according to this bill. As recorder’s we take many types of deeds and documents over to the Auditor’s Office for transfer. They in turn check the taxes and if taxes are paid they make the transfer and bring them back to our office for recording. The chain of title is not something we check as we are not attorneys and cannot run title to make sure all the correct documents have been recorded.

I have been made aware that there might be a possible amendment to this bill, again with the verbiage I was sent has **“shall not be transferred”**. Again it doesn’t state who shall not transfer it and could create unintended consequences.

For these reasons I respectfully ask you to give this bill a **DO NOT PASS!**

Thank you for your time and support.

Carrie K. Krause, Wells County Recorder



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
SB 2223
January 28, 2021

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I'd like to express our opposition to SB 2223.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

If a debtor is willing to give a deed to avoid foreclosure, NDFCC does not support requiring a creditor to go through the legal steps to get an order for foreclosure from the courts. By requiring a judgement, this bill would take away the ability for lenders and borrowers to settle disputes privately. In addition, by requiring legal action, which is a public record, this bill would take away an opportunity to keep the debtor's financial situation private.

The rationale behind deed-in-lieu statutes is that it is an option to avoid foreclosure and court proceedings if both parties agree. This point isn't NDFCC's alone, it's reflected by several legal commentaries on the topic. By placing the additional requirement of obtaining a court order or judgment, one of the primary flexibility advantages of the statute is lost. In addition, giving and accepting deeds-in-lieu of foreclosure is a voluntary action by both parties. No one is ever legally forced to give a deed-in-lieu of foreclosure. This is an option that doesn't take state resources, besides recording the deed. If passed, the courts must be involved.

Thank you for the opportunity to address the committee and express opposition to SB 2223, and for your continued commitment to working together to address the needs of North Dakotans.

Independently owned and operated associations serving North Dakota.

AgCountry FCS

1900 44th Street South
 Fargo, ND 58108
 701-282-9494 • 800-450-8933
www.agcountry.com

FCS of Mandan

1600 Old Red Trail
 Mandan, ND 58554
 701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota

1400 31st Ave. SW
 Minot, ND 58702
 701-852-1265 • 800-264-1265
www.farmcreditnd.com