

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2277
(Senator Holmberg)

AN ACT to amend and reenact sections 28-23-01, 28-23-02, 28-23-04, 28-23-05, 28-23-06, 28-23-07, 28-23-09, 28-23-11, 28-23-12, 28-23-13, and 28-23-14 of the North Dakota Century Code, relating to sales under execution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-01 of the North Dakota Century Code is amended and reenacted as follows:

28-23-01. Sale of personal property - Notice of sale. The officer who levies upon personal property, other than crops or perishable property, ~~by virtue of an execution, before the officer proceeds to sell the same,~~ shall cause give public notice ~~to be given~~ of the time and place of such the sale by advertisement published once each week for two successive weeks next before the day of sale; in ~~some the county's official~~ newspaper ~~printed in the county, such newspaper to be designated by the judgment creditor or the judgment creditor's attorney, or, in case no newspaper is published therein, by posting advertisements in five public places in the county.~~

SECTION 2. AMENDMENT. Section 28-23-02 of the North Dakota Century Code is amended and reenacted as follows:

28-23-02. Sale of crops. If the levy is upon ~~crops, when harvested, such~~ crops, at the option of the judgment creditor, the crops may be sold in the nearest usual market ~~therefor for crops,~~ at any time; after such levy, ~~in the usual manner,~~ at the market price ~~thereof in such market and~~ without publishing ~~or posting~~ notice of sale. In that case, ~~however,~~ the notice of levy; or a subsequent notice to be served as the notice of levy is served; must state where and when ~~such the~~ crops will be sold. Should the judgment debtor, or the judgment debtor's agent or attorney, at the time ~~such the~~ levy is made, give notice to the officer making the levy that the judgment debtor intends to settle the judgment, the officer shall hold the grain six days before making sale ~~thereof of the grain.~~ The usual and reasonable charges for the sale and transportation of such the grain to market must be deemed proper expenses chargeable as costs in ~~such the~~ proceedings, and in case the notice above provided for is served on the officer there also must be chargeable reasonable charges for storing ~~said the~~ grain.

SECTION 3. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

28-23-04. Sale of real property - Notice of sale - Contents.

1. Before any real property or interest ~~therein in real property~~ taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:
1. ~~If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a the county's official newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to before the making of the sale; and,~~
2. ~~In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.~~

Except for parties who have an ownership interest in the real property ~~subject to foreclosure of a mortgage under chapter 32-19~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days ~~prior to~~ before the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

SECTION 4. AMENDMENT. Section 28-23-05 of the North Dakota Century Code is amended and reenacted as follows:

28-23-05. Where sale of real property made. All sales of real property; or any interest ~~therein, in real property~~ under execution; must be held ~~at the courthouse, if there is one in the county in which such the real property is situated, and if there is no courthouse, then at the door of the house in which the district court was last held, and if there is no courthouse and no district court has been held in the county, then~~ or at such a place within the county as the sheriff shall designate designates in the sheriff's notice of sale, or the place designated in the published notice of sale if the foreclosure is by advertisement.

SECTION 5. AMENDMENT. Section 28-23-06 of the North Dakota Century Code is amended and reenacted as follows:

28-23-06. Place of sale of personal property. If the owner of the personal property levied on, other than crops, agrees to keep ~~such the~~ property safely until the day of sale and requests that the sale be held on the premises where the property is seized, the sale must be held on the premises where the property is seized. Otherwise the sale may be had at the place designated by the sheriff in the notice of sale. ~~This provision also applies in case of foreclosure by advertisement.~~

SECTION 6. AMENDMENT. Section 28-23-07 of the North Dakota Century Code is amended and reenacted as follows:

28-23-07. Time and manner of sale. All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine a.m. and four p.m. After sufficient property has been sold to satisfy the execution, no more property may be sold. ~~No~~ A sheriff or other officer; ~~nor a or the~~ sheriff's or officer's deputy; holding the execution or making the sale of property; ~~either personal or real, may not become a purchaser or be interested directly or indirectly in any purchase at such the sale, and every.~~ A purchase so made must be considered fraudulent and void. When If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in such parcels as are likely to bring the highest price, and when the sale is of real property consisting of several known lots or parcels they must be sold separately unless they constitute one parcel on which improvements have been constructed. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, must be sold, when such if the property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the. The sheriff or other officer shall follow ~~such these~~ these directions.

SECTION 7. AMENDMENT. Section 28-23-09 of the North Dakota Century Code is amended and reenacted as follows:

28-23-09. Surplus paid judgment debtor. ~~When~~ Except for real estate foreclosure sales if the property sells for more than the amount required to be collected, the surplus must be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

SECTION 8. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Upon a sale of real property, the purchaser is substituted for the judgment debtor and acquires all the right, title, interest, and claim of ~~such the~~ debtor to ~~such the~~ property, ~~and when.~~ If the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this title. The officer shall give to the purchaser a certificate of sale containing:
 - 1- A ~~particular~~ a description of the real property sold;
 - 2- A a statement of the price bid for each distinct lot or parcel;
 - 3- A a statement of the whole price paid; ~~and~~
 - 4- ~~When subject to the period of redemption, a statement to that effect; and the name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.~~
2. ~~Such certificate must be executed by the~~ The officer shall execute the certificate and ~~acknowledged~~ acknowledge or ~~proved~~ prove the certificate as ~~may be required by law~~ for deeds of real property.

SECTION 9. AMENDMENT. Section 28-23-12 of the North Dakota Century Code is amended and reenacted as follows:

28-23-12. Recording of sheriff's certificate required - Evidence. The sheriff's certificate of sale must be recorded in the office of the recorder of the county ~~wherein~~ in which the real property is situated; within ~~sixty~~ ten days from the date of sale. ~~Such~~ The sheriff's certificate or a certified copy ~~thereof~~ of the certificate certified by ~~such the~~ recorder must be taken and deemed evidence of the facts ~~therein recited and contained~~ in the certificate.

SECTION 10. AMENDMENT. Section 28-23-13 of the North Dakota Century Code is amended and reenacted as follows:

28-23-13. Proceedings upon confirmation. If the court, upon the return of any execution for the satisfaction of which any real property or interest ~~therein~~ in real property has been sold, after having carefully examined the proceedings of the officer; is satisfied that the sale has been made in all respects in conformity to the provisions of this chapter, the court shall make an order confirming the sale and directing the clerk to make an entry on the journal that the court is satisfied of the legality of ~~such the~~ sale; and an order that the officer make to the purchaser a deed of ~~such the~~ real property; or interest ~~therein~~, in the real property at the expiration of ~~one year from the day of sale~~ the redemption period unless the ~~same~~ property is redeemed. The officer ~~after making such sale~~ may retain the purchase money ~~in the officer's hands~~ until the court ~~has examined the officer's proceedings as aforesaid~~ confirms the sale, ~~when~~ then the officer shall pay the ~~same~~ money to the person entitled ~~thereto~~ to the money by order of the court.

SECTION 11. AMENDMENT. Section 28-23-14 of the North Dakota Century Code is amended and reenacted as follows:

28-23-14. Reversal does not defeat sale. If any judgment, in satisfaction of which any real property is sold, is reversed ~~at any time thereafter~~, ~~such the~~ reversal does not defeat nor affect the title of the purchaser, but ~~in such case~~, restitution must be made by the judgment creditor of the money ~~for which such real property was sold~~ received from the sale, with legal interest ~~thereon~~ on the money from the day of sale.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2277.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 90 Nays 2 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State