

# PROPERTY

## CHAPTER 345

### HOUSE BILL NO. 1399

(Representatives Headland, Belter, Brandenburg, Damschen)  
(Senators Dotzenrod, Erbele, Wanzek)

AN ACT to amend and reenact subsection 2 of section 47-05-02.1 of the North Dakota Century Code, relating to duration of waterfowl production area easements; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 47-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property must be specifically set out, and in no case may the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. A waterfowl production area easement that exceeds fifty years or which purports to be perpetual may be extended by negotiation between the owner of the easement and the owner of the servient tenement. A waterfowl production area easement that exceeds fifty years or which purports to be permanent and is not extended by negotiation is void. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 30, 2017.

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 346

### SENATE BILL NO. 2168

(Senators Holmberg, Hogue, Triplett)  
(Representative Delmore)

AN ACT to amend and reenact section 47-10-15 of the North Dakota Century Code, relating to after-acquired title; and provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 47-10-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-10-15. After-acquired title.**

When a person purports by proper instrument to ~~grant~~ convey real property in fee simple and subsequently acquires any title or claim of title ~~thereto~~ to the real property, the ~~same~~ real property passes by operation of law to the ~~grantee or the grantee's successors~~ person to whom the property was conveyed or that person's successor. A quitclaim deed that includes the word "grant" in the words of conveyance, regardless of the words used to describe the interest in the real property being conveyed by the grantor, passes after-acquired title. The use of a quitclaim deed, with or without the inclusion of after-acquired title in the deed, does not create any defect in the title of a person that conveys real property. This section applies to any conveyance regardless of when executed.

Approved April 8, 2013  
Filed April 8, 2013

## CHAPTER 347

### SENATE BILL NO. 2136

(Senators Krebsbach, Klein)  
(Representatives Keiser, Porter)

AN ACT to amend and reenact sections 47-14-05 and 47-14-07 of the North Dakota Century Code, relating to interest rates and late fees.

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

**SECTION 1. AMENDMENT.** Section 47-14-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-14-05. Legal rate of interest - Interest after maturity.**

Interest for any legal indebtedness must be at the rate of six percent per annum unless a different rate not to exceed the rate specified in section 47-14-09 is contracted for in writing. ~~All~~Unless otherwise agreed by the parties in writing, all contracts must bear the same rate of interest after maturity as they bear before maturity, ~~and any contract attempting to make the rate of interest higher after maturity is void as to the increase of interest, except for a charge for late payment penalty charged in addition to interest which may not exceed fifteen dollars or fifteen percent of the late payment, whichever is less, unless otherwise agreed to in any commercial, agricultural, or real estate note or mortgage. A charge for a late payment penalty may be imposed only if the amount of the late charge or the method of calculation of the late charge has been agreed to by the parties in the loan documents that are signed by the borrower.~~

**SECTION 2. AMENDMENT.** Section 47-14-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-14-07. Interest rate - Before and after breach.**

Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, ~~as before,~~ until the contract is superseded by a verdict or other new obligation.

Approved March 19, 2013

Filed March 19, 2013

## CHAPTER 348

### HOUSE BILL NO. 1357

(Representatives Kreun, Anderson, Owens)  
(Senators Klein, Laffen)

AN ACT to amend and reenact section 47-14-09 of the North Dakota Century Code, relating to usury and pawnbrokers.

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

**SECTION 1. AMENDMENT.** Section 47-14-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-14-09. Usury - Definition - Maximum contract rate - Prohibition - Exclusions.**

1. Except as otherwise provided by the laws of this state, a person, either directly or indirectly, may not take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than five and one-half percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately preceding the month in which the transaction occurs, as computed and declared on the last day of each month by the state banking commissioner, but that in any event the maximum allowable interest rate ceiling may not be less than seven percent, and in the computation of interest the same may not be compounded; provided, however, that a minimum interest charge of fifteen dollars may be made. A contract may not provide for the payment of interest on interest overdue, but this section does not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section is deemed usury.
2. This section does not apply to a:
  - a. Bona fide pawnbroking transaction in an amount not exceeding ~~one~~ten thousand dollars which is made by a bona fide pawnbroking business transacted under a pawnbroker's license;
  - b. Loan made to a foreign or domestic corporation, foreign or domestic limited liability company, cooperative corporation or association, or trust;
  - c. Loan made to a partnership, limited partnership, or association that files a state or federal partnership income tax return;
  - d. Loan or forbearance of money, goods, or things in action the principal amount of which amounts to more than thirty-five thousand dollars; and
  - e. Loan made by a lending institution which is regulated or funded by an agency of a state or of the federal government.

3. Notwithstanding the interest rate limit set under this section, state-chartered banks and the Bank of North Dakota may charge interest at a rate equal to the maximum allowable rate which lawfully may be charged for a particular type of loan by national banking associations or state or federally chartered savings and loan associations operating out of facilities located in this state.
4. As used in this section, "bona fide pawnbroking transaction" means a transaction with a licensed pawnbroker which includes both possession and a pledge of tangible personal property.

Approved April 12, 2013  
Filed April 12, 2013

## CHAPTER 349

### HOUSE BILL NO. 1267

(Representatives K. Koppelman, Beadle, Kasper, Paur)  
(Senators Hogue, Laffen, Unruh)

AN ACT to amend and reenact section 47-16-30.1 of the North Dakota Century Code, relating to disposal of abandoned property by a lessor.

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

**SECTION 1. AMENDMENT.** Section 47-16-30.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-16-30.1. Abandoned property - Disposal by lessor.**

Property with a total estimated value of not more than ~~one~~two thousand five hundred dollars which is left on the premises of a leased dwelling ~~thirty days after the tenant has vacated the premises after the expiration of the lease term~~ may be retained by the lessor and disposed of without legal process twenty-eight or more days after the lessor received actual notice that the lessee has vacated the premises or twenty-eight or more days after it reasonably appears to the lessor that the lessee has vacated the premises. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property. If the lessor removes the abandoned property from the dwelling unit after a judgment of eviction has been obtained and the special execution has been served, the lessor has a lien upon the property for the reasonable amount of any storage and moving expenses and may retain possession of the property until the charges have been paid. The lien does not have priority over a prior perfected security interest in the property.

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 350

### SENATE BILL NO. 2170

(Senators Holmberg, Hogue, Triplett)  
(Representative Delmore)

AN ACT to amend and reenact section 47-19-41 of the North Dakota Century Code, relating to the effect of recording.

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

**SECTION 1. AMENDMENT.** Section 47-19-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-19-41. Effect of not recording - Priority of first record - Constructive notice - Limitation and validation.**

~~Every~~An unrecorded conveyance of real estate ~~not recorded shall be~~ void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part ~~or portion thereof of the same real estate, whose conveyance, regardless of whether recorded in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release, or~~ of or the form in common use ~~or otherwise, first is deposited with the proper officer for record and subsequently recorded, whether entitled to record or not, or as against an attachment levied thereon on the property or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears~~owner of record, prior ~~to~~before the recording of ~~such~~the conveyance. The fact that ~~such~~the first deposited and recorded conveyance of ~~such~~ subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of a quitclaim and release aforesaid, ~~shall~~does not affect the question of good faith of the subsequent purchaser, or be of itself notice to the subsequent purchaser of any unrecorded conveyance of the same real estate or any part thereof ~~of the same real estate~~. This section shall be legal notice to all who claim under unrecorded instruments that prior recording of later instruments ~~not entitled to be recorded~~ may nullify their right, title interest, to or lien, ~~to, in, or upon~~ on affected real property. ~~No~~An action affecting any right, title to, interest, or lien, ~~to, in, or upon~~ on real property shall may not be commenced or maintained or defense or counterclaim asserted ~~or recognized in court~~ on the ground that a recorded instrument was not entitled to be recorded. The record of all instruments whether or not ~~the same~~ were entitled to be recorded shall be deemed valid and sufficient as the legal record ~~thereof of the instruments~~. The holder of an unrecorded conveyance may not question the good faith of the first recording party unless it can be established that the first recording party had actual knowledge of the existence of the unrecorded conveyance.

Approved April 8, 2013  
Filed April 8, 2013

## CHAPTER 351

### SENATE BILL NO. 2169

(Senators Holmberg, Hogue)  
(Representative Delmore)

AN ACT to amend and reenact sections 47-19.1-01, 47-19.1-02, 47-19.1-03, and 47-19.1-07 of the North Dakota Century Code, relating to what constitutes marketable title.

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

**SECTION 1. AMENDMENT.** Section 47-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-19.1-01. What constitutes marketable title.**

Any person having the legal capacity to own real estate in this state, who ~~that~~ has an unbroken chain of title to any interest in real estate by ~~that person~~ and that person's immediate or remote grantors under a deed of conveyance ~~which~~ other title transaction that has been recorded of record for a period of twenty years or longer, and is in possession of ~~such real estate~~ the interest, shall be deemed to have a marketable record title to ~~such~~ the interest, subject ~~only~~ solely to ~~such~~ the claims thereto ~~and~~ or defects of title ~~as~~ that are not extinguished or barred by the application of the provisions of this chapter, instruments ~~which~~ that have been recorded less than twenty years, and any encumbrances of record not barred by the statute of limitations.

**SECTION 2. AMENDMENT.** Section 47-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-19.1-02. Definitions.**

As used in this chapter:

1. A person shall be ~~be~~ deemed to have the unbroken chain of title to an interest in real estate when the official ~~public~~ records of the county ~~wherein such land is situated~~ recorder disclose a conveyance or other title transaction ~~dated and recorded of record~~ twenty years or more ~~prior thereto~~; which conveyance or other title transaction purports to create ~~such~~ the interest in that person or that person's immediate or remote grantors, with nothing appearing of record purporting to divest that person and that person's immediate or remote ~~grantors of such~~ purposed interest.
2. Title transaction means any transaction affecting title to real estate, including title by will or descent from any person who held title of record at ~~the date of that person's death~~, title by a decree or order of any court, title by tax deed or by trustee's, referee's, guardian's, executor's, ~~master's in chancery~~; or sheriff's deed, as well as by direct conveyance or reservation.

**SECTION 3. AMENDMENT.** Section 47-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-19.1-03. Notice of adverse claim of interest filed.**

~~Such marketable~~Marketable title shall be held by such a person and shall be taken by that person's successors in interest free and clear of all interest, claims, or any charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred twenty years or more prior thereto before the present date, whether such claim or charge be evidenced by a recorded instrument or otherwise, and all such interests, claims, and charges affecting such the interest in real estate shall be barred and not enforceable at law or equity, unless any a person making such makes an adverse claim or asserting such interest or charge, shall, on or before twenty years from the date of recording of deed of the conveyance or other title transaction under which title is claimed, or within one year from the effective date of this section, whichever event is the latest in point of time, file for record and records a verified notice in writing, duly verified by oath, setting forth the nature of the person's adverse claim, interest, or charge; and no. A disability nor or lack of knowledge of any kind on the part of anyone shall operate to may not extend the time for filing such claims the notice after the expiration of the twenty years from the recording of such deed of conveyance or one year after the effective date of this section, whichever event is the latest in point of time.

**SECTION 4. AMENDMENT.** Section 47-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**47-19.1-07. Evidence of possession recorded.**

For the purpose of this chapter, the fact of possession of an interest in real estate referred to in section 47-19.1-01 may be shown of record by one or more affidavits which shall contain containing the legal description of the real estate referred to and show showing that the record title holder person is upon the date thereof in possession of such the interest in real estate. The recorder shall record such the affidavits in the miscellaneous records of the recorder's county and index the same against the real estate. No such affidavits An affidavit of possession shall may not be filed as to any real estate before the expiration of twenty years from the recording of deed of the conveyance or other title transaction under which title is claimed, or before one year after the effective date of this section, whichever event is the latest in point of time, as to any real estate as to which a claim under the provisions of section 47-19.1-05 shall have been filed. The holder of an interest in severed minerals is deemed in possession of the minerals if that person has used the minerals as defined in section 38-18.1-03 and the use is stated in the affidavit of possession provided for in this section.

Approved April 8, 2013  
Filed April 8, 2013

## CHAPTER 352

### SENATE BILL NO. 2322

(Senators Erbele, Andrist, Wanzek)  
(Representatives Brandenburg, Kempenich, Silbernagel)

AN ACT to amend and reenact section 47-26-01 of the North Dakota Century Code, relating to an electrified fence as being within the definition of a legal fence.

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

**SECTION 1. AMENDMENT.** Section 47-26-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-26-01. Definition of legal fence.**

The following shall constitute a legal fence:

1. Any fence four and one-half feet [1.37 meters] high, in good repair, consisting of rails, timber, boards, stone walls, or any combination thereof.
2. All brooks, rivers, ponds, creeks, ditches, or hedges.
3. All things which, in the judgment of the fence viewers within whose jurisdiction the fence may be, are equivalent to the things specified in subsections 1 and 2.
4. Any fence upon which the interested parties may agree.
5. A barbed wire fence consisting of at least three barbed wires with at least number twelve and one-half gauge wire, the wire to be fastened firmly to posts which shall be not more than twenty feet [6.10 meters] or not more than forty feet [12.19 meters] and three stays apart. The top wire shall be not less than forty inches [101.6 centimeters] high, the bottom wire shall be not more than sixteen inches [40.64 centimeters] above the ground, and no two adjacent wires shall be separated by more than sixteen inches [40.64 centimeters].
6. A wire fence consisting of five smooth wires with posts not more than two rods [10.06 meters] apart and with good stays not more than eight feet [2.44 meters] apart, the top wire being not less than forty-eight inches [121.92 centimeters] nor more than fifty-six inches [142.24 centimeters] and the bottom wire being not less than sixteen inches [40.64 centimeters] nor more than twenty inches [50.8 centimeters] above the ground.
7. An electrified fence consisting of:
  - a. One smooth wire located twenty-six inches to thirty-two inches [66.04 centimeters to 81.28 centimeters] above the ground and posts no more than one hundred feet [30.48 meters] apart;
  - b. Two smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the bottom wire located eight inches

to ten inches [20.32 centimeters to 25.40 centimeters] below the top wire, and posts no more than one hundred feet [30.48 meters] apart; or

- c. Three smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the middle and bottom wires located eight inches to twelve inches [20.32 centimeters to 30.48 centimeters] apart, and posts no more than seventy-five feet [22.86 meters] apart.

Approved March 19, 2013

Filed March 19, 2013

## CHAPTER 353

### HOUSE BILL NO. 1162

(Representative Streyle)  
(Senator J. Lee)

AN ACT to amend and reenact section 47-30.1-01 of the North Dakota Century Code, relating to definitions for unclaimed property purposes.

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

**SECTION 1. AMENDMENT.** Section 47-30.1-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-30.1-01. Definitions and use of terms.**

As used in this chapter:

1. "Administrator" means the administrator of the state abandoned property office.
2. "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.
3. "Banking organization" means a bank, trust company, savings bank, private banker, or any organization defined by other law as a bank or banking organization.
4. "Business association" means a corporation, limited liability company, joint-stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.
5. "Domicile" means the state of incorporation of a corporation or state of organization of a limited liability company and the state of the principal place of business of an unincorporated person.
6. "Financial organization" means a savings and loan association or credit union.
7. "Holder" means a person, wherever organized or domiciled, who is:
  - a. In possession of property belonging to another;
  - b. A trustee; or
  - c. Indebted to another on an obligation.
8. "Insurance company" means an insurance company as defined by section 26.1-02-01 and also includes a benevolent society, nonprofit health service corporation, and health maintenance organization.

9. "Intangible property" includes:
  - a. Moneys, checks, drafts, deposits, interest, dividends, and income.
  - b. Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.
  - c. Stocks and other intangible ownership interests in business associations.
  - d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
  - e. Amounts due and payable under the terms of insurance policies.
  - f. Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.
  - g. Amounts distributable from a mineral interest in land.
10. "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a cashier's check, bank money order, or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.
11. "Mineral proceeds" means all obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements and all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.
- 44-12. "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or that person's legal representative.
- 42-13. "Person" means an individual, business association, state or other government including the government of the United States, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.
- 43-14. "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.
- 44-15. "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

## CHAPTER 354

### HOUSE BILL NO. 1316

(Representatives Louser, Beadle, Becker, Streyle, Wieland)  
(Senators Krebsbach, J. Lee, Poolman)

AN ACT to create and enact two new sections to chapter 47-34 of the North Dakota Century Code, relating to good funds and disclosures for real estate transactions; and to amend and reenact sections 47-34-01 and 47-34-02 of the North Dakota Century Code, relating to good funds for real estate transactions.

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

**SECTION 1. AMENDMENT.** Section 47-34-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-34-01. Definitions.**

As used in this chapter:

1. "Closing agent" means a person that closes a real estate transaction in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender.
2. "Collected funds" means a cash deposit or a check that has been presented for payment and for which payment has been irrevocably credited to the closing agent's escrow account.
3. "Escrow account" means:
  - a. A checking account established by a closing agent with a bank, savings and loan association, credit union, or savings bank that is chartered under the laws of a state or the United States and which is used exclusively for the deposit and disbursement of funds for a real estate transaction; or
  - b. A trust account maintained by an attorney under the North Dakota Rules of Professional Conduct.
- ~~3-4.~~ "Good funds" means funds in any one or more of the following forms:
  - a. United States currency.
  - b. Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
  - c. A check that has been presented for payment and for which payment has been ~~received~~collected. As used in this subdivision, the term check includes a certified check and a cashier's check.

- d. ~~A check not to exceed three thousand dollars which~~ that is drawn on the trust account of a real estate broker licensed under chapter 43-23 or on the trust account maintained by an attorney under the North Dakota Rules of Professional Conduct, ~~if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the trust account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow for which funds are collected funds by the real estate broker or the attorney's trust account.~~
  - e. A cashier's check not to exceed ~~ten~~ ten fifty thousand dollars in the aggregate ~~that~~ which is received by the closing agent and which is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States located in this state, Minnesota, Montana, or South Dakota.
  - f. A check drawn on the escrow account of another closing agent, ~~if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction in this state, Minnesota, Montana, or South Dakota.~~
  - g. Funds transferred to the closing agent's escrow account by the bank, savings and loan association, credit union, or savings bank that is the host institution of the closing agent's escrow account.
- 4-5. "Real estate transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition in connection with the purchase, sale, or financing of an interest in real estate; or a settlement or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a loan financing if the only parties to the loan transaction are the lender and the borrower, and the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

**SECTION 2. AMENDMENT.** Section 47-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**47-34-02. Real estate transaction disbursements.**

A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds that are received ~~from any single party to the real estate transaction which in the aggregate are at least ten thousand dollars~~ are good funds.

**SECTION 3.** A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

**Disclosures.**

In a prominent manner in the closing documents, a closing agent shall disclose to the seller the anticipated closing date and all of the dates through which any loan payoffs are calculated.

**SECTION 4.** A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

**Civil damages.**

In addition to any other cause of action that may exist, a person may bring a cause of action against a person that violates section 47-34-02. In addition to any actual damages a plaintiff may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred dollars per violation in the first action. In any subsequent action for violation of section 47-34-02, a person is liable for one thousand dollars per violation.

Approved April 12, 2013  
Filed April 12, 2013

## CHAPTER 355

### HOUSE BILL NO. 1191

(Representatives Maragos, Delmore)  
(Senators Laffen, Nelson)

AN ACT to provide for security interests in rents.

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

#### **SECTION 1.**

##### **Security interest in rents.**

1. A document, however denominated, that is enforceable and creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property, creates an assignment of rents arising from the real property described in the document, unless the document provides otherwise.
2. An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, whether the document is denominated an absolute assignment, an absolute assignment condition upon default, an assignment as additional security, or otherwise. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

#### **SECTION 2.**

##### **Cash proceeds - Priority.**

1. An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with chapter 41-09.
2. Except as otherwise provided in subsection 3, priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in chapter 41-09.
3. An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under chapter 41-09 but has priority over a conflicting interest that is perfected other than by control.

#### **SECTION 3.**

##### **Perfection of security interest in rents.**

1. A document creating an assignment of rents may be submitted for recording in the office of the recorder for the county in which the real property described in the document is located in the same manner as any other document evidencing a conveyance of an interest in real property.

2. Upon recording, the security interest in rents created by an assignment of rents is fully perfected, notwithstanding any provision of the document creating the assignment or other law of this state which would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.
3. Except as otherwise provided in subsection 4, a perfected security interest in rents takes priority over the rights of a person who, after the security interest is perfected, acquires an interest in or judgment lien against the rents or the real property from which they arise.
4. A perfected security interest in rents has priority over the rights of a person listed in subsection 3 with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

#### **SECTION 4.**

##### **Enforcement of security interest in rents.**

1. An assignee may enforce an assignment of rents using any method sufficient to enforce the assignment under law of this state, including notice to the assignor, notice to the tenant, and the appointment of a receiver.
2. From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver, the receiver is entitled to collect all rents that have accrued but remain unpaid on that date and accrue on or after that date, as those rents accrue.

#### **SECTION 5.**

##### **Application to existing relationships.**

1. Except as otherwise provided in this section, this Act governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before August 1, 2013.
2. This Act does not affect an action or proceeding commenced before August 1, 2013.
3. This Act does not affect:
  - a. The enforceability of an assignee's security interest in rents or proceeds if immediately before August 1, 2013, that security interest was enforceable;
  - b. The perfection of an assignee's security interest in rents or proceeds if immediately before August 1, 2013, that security interest was perfected; or
  - c. The priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if immediately before August 1, 2013, the interest of the other person was enforceable and perfected, and that priority was established.