

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1366

Introduced by

Representatives Vigesaa, D. Ruby, Weisz, Westlind

Senators Bakke, Clemens, Dwyer

1 A BILL for an Act to create and enact a new section to chapter 35-13 of the North Dakota
2 Century Code, relating to the nonjudicial disposition of property by lienholders; and to amend
3 and reenact sections 35-13-01, 35-13-04, 35-13-05, and 35-13-06 of the North Dakota Century
4 Code, relating to repairman's liens, priority of liens, notice requirements, and assignments.

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

6 **SECTION 1. AMENDMENT.** Section 35-13-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **35-13-01. Repairman's lien authorized.**

9 Any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder,
10 garage keeper, mechanic, or aviation operator, having an established place of business in this
11 state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm
12 equipment, construction equipment, well machine, aircraft, or watercraft at the request of the
13 owner or legal possessor of the property has a lien on that property, and on any accessories
14 and parts placed upon the property, for reasonable charges for work done ~~and~~ materials
15 furnished, storage fees, and transportation costs, until the charges are paid. If the cost of repair
16 would exceed ~~four~~six thousand dollars or thirty percent or, ~~nine~~fifteen thousand dollars or thirty
17 percent for property used for agricultural or construction purposes, of the value of the property,
18 in the property's repaired condition, whichever is greater, and the repairman intends to have the
19 entire repair bill constitute a lien with priority over ~~the mortgage or financing statement~~any liens
20 of record, the repairman shall give notice by registered or certified mail to the ~~recordholder of~~
21 ~~the mortgage or financing statement~~lienholders of record of the proposed repair, the estimated
22 cost of repair, and the estimated value of the property in its repaired condition. Storage fees
23 under this chapter may not begin to accrue until fifteen days after the owner is requested to take
24 possession of the property.

1 **SECTION 2. AMENDMENT.** Section 35-13-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **35-13-04. Priority of lien.**

4 A lien obtained under this chapter has priority over all other liens, chattel mortgages, or
5 encumbrances against the personal property upon which the lien is secured, but if the
6 repairman has failed to notify the ~~recordholder of the mortgage or financing statement~~lienholder
7 of record as provided in section 35-13-01, or if such notice was given and the ~~holder of the~~
8 ~~mortgage or financing statement~~lienholder of record, within five days after receiving such notice,
9 communicated in writing to the repairman an objection to all the proposed repair costs
10 becoming a lien against the property with priority over the ~~mortgage or financing~~
11 ~~statement~~existing liens of record, then only that portion of the repairman's lien up to ~~four~~six
12 thousand dollars or thirty percent, or ~~nine~~fifteen thousand dollars or thirty percent for property
13 used for agricultural or construction purposes, of the retail value, whichever is greater, in the
14 property's repaired condition, has priority over the ~~mortgage or financing statement~~existing lien
15 of record.

16 **SECTION 3. AMENDMENT.** Section 35-13-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **35-13-05. Notice before foreclosure to ~~prior mortgagee~~.**

19 1. A person holding a lien under this chapter on property ~~which has been~~ encumbered
20 ~~previously by mortgage, by prior liens of record or~~ before beginning any action or
21 proceeding for the foreclosure of the lien, shall give ~~twenty~~ten days' notice in writing of
22 the lienholder's intention to foreclose the lien to the ~~recordholder of the~~
23 ~~mortgage~~lienholders of record and the owner of the property. The notice may be
24 served by registered or certified mail addressed to the ~~recordholder~~lienholders of
25 record and property owner at the ~~recordholder's~~lienholders and property owner's
26 last-known post-office address.

27 2. The notice before foreclosure must include:

- 28 a. A description of the property subject to the lien;
29 b. The grounds for the lien;
30 c. The name, address, and telephone number of the lienholder;
31 d. The amount owed;

- 1 e. The date after which the property subject to the lien will be offered for sale; and
2 f. A statement that the lienholder of record or property owner may reclaim the
3 property subject to the lien before the property is offered for sale by paying the
4 amount owed.

5 **SECTION 4. AMENDMENT.** Section 35-13-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **35-13-06. MortgageeLienholder may pay amount of lien - Assignment of lien.**

8 The holder of any ~~mortgagerecord~~ lienholder of any lien against property on which a lien
9 has been filed under ~~the provisions of~~ this chapter may pay the amount due on the lien at any
10 time ~~previous to~~before a sale upon the foreclosure ~~thereof~~ of the property. Upon payment of the
11 lien by a ~~mortgageholder~~lienholder, the holder of the lien shall assign it to ~~such mortgageholder~~
12 the lienholder, and thereafter the ~~mortgageholder~~lienholder then is entitled to all the rights which
13 the person filing the lien had before the lien was paid.

14 **SECTION 5.** A new section to chapter 35-13 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Nonjudicial disposition of property.**

17 The person holding a lien under this chapter has the rights of a secured party under article
18 nine of the Uniform Commercial Code for purposes of nonjudicial disposition of the property. A
19 person holding a lien under this chapter who chooses to use nonjudicial disposition of the
20 property shall dispose of the property in the manner prescribed for security interests under
21 article nine of the Uniform Commercial Code.