

TESTIMONY BEFORE POLITICAL SUBDIVISIONS COMMITTEE

Chairman Burckhard, Members of the Committee, my name is Dean Rindy and I am an attorney in Fargo practicing principally in Real Estate. I do a significant number of foreclosures, including foreclosures for the North Dakota Housing Finance Agency. I am here today to support SB 2191.

Essentially, the proposed amendments to Section 32-19-41 of the North Dakota Century Code anticipated by SB 2191 are a follow up to the amendments last session passed in SB 2205, which accomplished one significant task: it relieved a foreclosing mortgagee from the unnecessary, time consuming and expensive task of locating the mortgagee of abandoned property. The passage of SB 2205 has served to effectively streamline the foreclosure process when the Court has adjudicated the mortgaged property abandoned, based upon evidence presented to the Court.

However, in passing SB 2205, one overlooked concern was the personal property left behind by the mortgagees. Presently, with the passage of SB 2205, the Court can adjudicate the property abandoned after notice and an opportunity to rebut the evidence is given the mortgagee, and if adjudicated abandoned, the Court can reduce or even eliminate the redemption period. However, if the mortgagee has left personal items of any value behind, Section 32-19-41 presently requires the mortgagor or purchaser at sheriff's sale to hold the personal property for thirty (30) days. In addition, if the total estimated value of the personal property is five hundred dollars, or more, the mortgagee or purchaser at sheriff's sale must make reasonable efforts to notify the mortgagor or person entitle to possession of the property during the redemption period, by certified mail, at least fifteen (15) days before disposal of the property.

In my experience, this creates two unintended conflicts.

The first is that if the Court determines, after notice and an opportunity to rebut the evidence is given the mortgagee, that the real property is abandoned, the Court can reduce or even eliminate the redemption period. If the Court reduces the redemption period to less than thirty (30) days, or eliminates it entirely, the mortgagor or purchaser at sheriff's sale may immediately take possession of the real property, but must hold or store the abandoned personal property for at least thirty (30) days. Moreover, if the total estimated value of the abandoned personal property is five hundred dollars, or more, the mortgagee or purchaser at sheriff's sale must make

reasonable efforts to notify the mortgagor or person entitled to possession of the property during the redemption period, by certified mail, at least fifteen (15) days before disposal of the property.

If there is no redemption period, because the Court has adjudicated the property abandoned based on facts submitted by the foreclosing party, which facts the record title holder has an opportunity to rebut during the foreclosure process, this process makes no sense. The party entitled to possession if there is no redemption period is the mortgagee or purchaser at sheriff's sale. One should not need give notice to oneself.

Secondly, if the Court has adjudicated the property abandoned based on facts submitted by the foreclosing party, which facts the record title holder has an opportunity to rebut during the foreclosure process, should not this adjudication of abandonment pertain not only to the real property, but to all those items contained therein?

In addressing SB 2205 and the changes created by its passage, the Legislature was cautious to grant the defaulting mortgagor notice of the foreclosure and an opportunity to respond and rebut the allegation of abandonment. SB 2205 could have eliminated both the necessity of giving the Notice Before Foreclosure contained in Section 32-19-20 of the North Dakota Century Code, and of serving the Summons and Complaint upon an allegation of abandonment. But it did not. The actual foreclosure Summons and Complaint still must be served by actual or published notice, so the property owner is always given a right to defend the action.

It is in this Complaint that the foreclosing mortgagee must allege abandonment and in doing so, is giving the defaulting mortgagor an opportunity to defend and claim the property is not abandoned. If successful in rebutting the allegation of abandonment, the changes to Section 32-19-41 of the North Dakota Century Code contemplated by SB 2191 do not apply, as Section 1 of SB 2191 contains the qualifier that the personal property left behind may be retained and disposed of "[i]f real property is adjudicated to be abandoned by an affidavit under section 32-19-23.1 or by petition under section 32-19-19."

Section 2 of SB 2191 states that if there has been no adjudication of abandonment, for the most part, the processes of Section 32-19-41 remain unchanged.

Accordingly, if the mortgagor or record title holder has been given notice that the foreclosing party is alleging abandonment in the foreclosure action, and has either

chosen not to defend this allegation or defended it but lost the defense in the foreclosure action, what more notice need be given with respect to the personal property? Once the Court makes the adjudication of abandonment, there is still the required entry of judgment, notice of entry of judgment, required three week's publication of notice of the sheriff's sale, and sale for the property owner to remove any personal property items of deemed to be of value.

For this reason, I support the passage of SB 2191.