

## **CHAPTER 47-10 REAL PROPERTY TRANSFERS**

### **47-10-01. Method of transfer.**

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by the party's agent thereunto authorized by writing. This does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

### **47-10-02. Sale of realty - Duty of seller.**

An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

#### **47-10-02.1. Property disclosure - Requirements.**

1. This section applies to a transaction for the sale, exchange, or purchase of real property if:
  - a. A real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
  - b. The real property is an owner-occupied primary residence located in this state being sold or exchanged by the owner.
2. Before the parties sign an agreement for the sale, exchange, or purchase of real property, the seller shall make a written disclosure to the prospective buyer. The written disclosure must include all material facts of which the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. The seller shall make the written disclosure in good faith and based upon the best of the seller's knowledge at the time of the disclosure.
3. Following the sale, exchange, or purchase of real property, the brokerage firm shall retain a copy of the written disclosure completed and signed by the seller and signed by the prospective buyer. The brokerage firm's duties under this section do not supersede any other common law or statutory duties.
4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations.
5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1.

### **47-10-03. Agreement to give usual covenants on sale - Duty imposed.**

An agreement on the part of a seller of real property to give the usual covenants binds the seller to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty, and against encumbrances.

### **47-10-04. Form of covenants.**

The covenants mentioned in section 47-10-03 must be in substance as follows:

The party of the first part covenants with the party of the second part that the former now is seized in fee simple of the property granted, that the latter shall enjoy the same without any lawful disturbance, that the same is free from all encumbrances, that the party of the first part and all persons acquiring any interest in the same through or for the party of the first part on demand will execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that reasonably may be required, and that the

party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

**47-10-05. Grants - Execution - Witnesses sufficient - Seal unnecessary.**

The execution of a grant of an estate in real property to entitle the same to be recorded, if it is not acknowledged, must be proved by a subscribing witness or as otherwise provided in sections 47-19-23 and 47-19-24. The absence of the seal of any grantor or grantor's agent from any grant of an estate made in real property shall not invalidate or in any manner impair the same.

**47-10-05.1. Presumption of corporate authority of officers - Application.**

An officer of any foreign or domestic corporation, or a manager of any foreign or domestic limited liability company, is presumed to have the power and authority to execute and acknowledge, in its behalf, any instrument granting, conveying, or otherwise affecting any interest in or lien upon any property of the corporation or limited liability company, including contracts, mortgages, deeds, plats, replats, easements, rights of way, options, dedications, restrictions, releases, and satisfactions. Any such instrument executed by an officer of the corporation or limited liability company prior to July 1, 1983, and otherwise proper, is valid and effective.

**47-10-06. Form of grant.**

A grant of an estate in real property may be made in substance as follows:

This grant made the \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, between A.B., of \_\_\_\_\_, of the first part, and C.D., of \_\_\_\_\_, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part in consideration of \_\_\_\_\_ dollars, now received, all the real property situated in \_\_\_\_\_, and bounded (or described) as follows:

\_\_\_\_\_  
Witness the hand of the party of the first part.

A.B.

**47-10-07. Deed - Execution - Post-office and street address of grantee a prerequisite.**

Each deed executed in which real estate is described shall contain the post-office address, and any known or existing street address if within the corporate boundaries of a city, of each grantee named in such deed.

**47-10-08. Grant conclusive against whom.**

Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under the grantor, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that first is duly recorded.

**47-10-09. Grant valid pro tanto.**

A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than the owner could transfer lawfully, does not work a forfeiture of the owner's estate but passes to the grantee all the estate which the grantor could lawfully transfer.

**47-10-10. Title to highway, street, alley, and public right of way - Vacation.**

A transfer of land bounded by a highway, street, alley, or public right of way passes the title of the person whose estate is transferred to the soil of the highway, street, alley, or public right of way in front to the center thereof unless a different intent appears from the grant. Every conveyance of real estate, which abuts upon a vacated highway, street, alley, or other public right of way, shall be construed, unless a contrary intent appears, to include that part of such highway, street, alley, or public right of way which attaches either by operation or presumption of law, to such abutting real estate upon such vacation.

**47-10-11. Easements - Pass by transfer of property to which attached.**

A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property obviously and permanently was used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

**47-10-12. Warranties - Lineal and collateral abolished - Exceptions.**

Lineal and collateral warranties with all their incidents are abolished but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

**47-10-13. Grant presumes fee simple title.**

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

**47-10-14. Grant takes effect on performance of condition.**

An instrument purporting to be a grant of real property to take effect upon a condition precedent passes the estate upon the performance of the condition.

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

When a person purports by proper instrument to convey real property in fee simple and subsequently acquires any title or claim of title to the real property, the real property passes by operation of law to the 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.

**47-10-16. Reconveyance when estate defeated by nonperformance of condition subsequent.**

When a grant is made upon condition subsequent and subsequently is defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or the grantor's successors by grant duly acknowledged for record.

**47-10-17. Encumbrances defined.**

The term encumbrances includes taxes, assessments, and all liens upon real property.

**47-10-18. Liability of grantor.**

Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all encumbrances, when an encumbrance appears of record to exist thereon, whether known or unknown to that person, shall be liable in an action of contract, to the grantee and the grantee's heirs, executors, administrators, successors, grantees, or assigns for all damages sustained in removing the same.

**47-10-19. Covenants implied from use of word grant.**

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for the grantor and the grantor's heirs to the grantee and the grantee's heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, nor any right, title, or interest therein, to any person other than the grantee; and
2. That such estate, at the time of the execution of such conveyance, is free from encumbrances done, made, or suffered by the grantor, or any person claiming under the grantor. Such covenants may be sued upon in the same manner as if they had been inserted expressly in the conveyance.

**47-10-20. Attornment - When unnecessary.**

Grants of rents, reversions, or remainders are good and effectual without attornments of the tenants, but no tenant, who before notice of the grant shall have paid rent to the grantor, must suffer any damage thereby.

**47-10-21. Reservation of coal limited to description.**

Repealed by S.L. 1979, ch. 187, § 108.

**47-10-22. Reservation without description ineffectual.**

Repealed by S.L. 1979, ch. 187, § 108.

**47-10-23. Transfer by grantor to the grantor and another in joint tenancy.**

Any person, firm, corporation, or limited liability company owning a legal or equitable title to or interest in any real property in the state of North Dakota may sell, transfer, and convey the same as grantor to the grantor and any other person, firm, corporation, or limited liability company, including the spouse of said grantor, in joint tenancy, with right of survivorship, without the necessity of any transfer or conveyance to or through any third person.

**47-10-23.1. Nontestamentary transfer between spouses - Presumption.**

A nontestamentary transfer of real property between spouses shall be presumed to be for a consideration, and not a gift, unless otherwise stated in writing at the time of transfer. This presumption is conclusive.

**47-10-24. Description and definition of minerals in leases and conveyances.**

All conveyances of mineral rights or royalties in real property in this state, excluding leases, shall be construed to grant or convey to the grantee thereof all minerals of any nature whatsoever except those minerals specifically excluded by name in the deed, grant, or conveyance, and their compounds and byproducts, but shall not be construed to grant or convey to the grantee any interest in any gravel, clay, or scoria unless specifically included by name in the deed, grant, or conveyance.

No lease of mineral rights in this state shall be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease. For the purposes of this paragraph the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall be deemed to include all of its compounds and byproducts, and in the case of oil and gas, all associated hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be included in the mineral named. The use of the words "all other minerals" or similar words of an all-inclusive nature in any lease shall not be construed as leasing any minerals except those minerals specifically named in the lease and their compounds and byproducts.

**47-10-25. Meaning of minerals in deed, grant, or conveyance of title to real property.**

In all deeds, grants, or conveyances of the title to the surface of real property executed on or after July 1, 1983, in which all or any portion of the minerals are reserved or excepted and thereby effectively precluded from being transferred with the surface, all minerals, of any nature whatsoever, shall be construed to be reserved or excepted except those minerals specifically excluded by name in the deed, grant, or conveyance and their compounds and byproducts.

Gravel, clay, and scoria shall be transferred with the surface estate unless specifically reserved by name in the deed, grant, or conveyance.

**47-10-26. Authority of trustee.**

The trustee of a trust that holds title to real property is presumed to have the power to sell, convey, and encumber the real property unless restrictions on that power appear in the records of the county recorder.

**47-10-27. Manufactured homes - Affixation to real property - Conveyance or encumbrance as real property.**

1. For purposes of this section, "manufactured home" means a manufactured home as defined in section 41-09-02. Notwithstanding this definition, for purposes of 11 U.S.C. 1322(b)(2), a manufactured home is deemed real property. For purposes of this section, a manufactured home is permanently affixed if the manufactured home is affixed to real property and connected to residential utilities, such as water, gas, electricity, or sewer or septic service.
2. To convey or voluntarily encumber a manufactured home as real property, the following conditions must be met:
  - a. The manufactured home must be permanently affixed to real property;
  - b. The ownership interests in the manufactured home and the real property to which the manufactured home is or will be permanently affixed must be identical, provided, however, that the owner of the manufactured home, if not the owner of the real property, is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution and the consent of the lessor of the real property;
  - c. The person having an ownership interest in the manufactured home shall execute and record with the recorder of the county in which the real property is located an affidavit of affixation as provided in subsection 3 and satisfies the other applicable requirements of this section; and
  - d. Upon receipt of a recorded copy of the affidavit of affixation under subsection 5, a person designated in the affidavit for filing with the department of transportation shall file the recorded copy of the affidavit of affixation with the department of transportation, except that:
    - (1) In a circumstance described in item 1 of subparagraph a of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation and the original manufacturer's certificate of origin, each as recorded in the county in which the real property is located, must be filed with the department of transportation under subsection 1 of section 39-05-35;
    - (2) In a circumstance described in item 1 of subparagraph b of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and the original certificate of title must be filed with the department of transportation under subsection 2 of section 39-05-35; and
    - (3) In a circumstance described in item 2 of subparagraph a of paragraph 4 of subdivision a of subsection 3, item 2 of subparagraph b of paragraph 4 of subdivision a of subsection 3, or paragraph 6 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and an application for confirmation of conversion must be filed with the department of transportation under subsection 3 of section 39-05-35.
3. a. An affidavit of affixation must contain or be accompanied by:
  - (1) The name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, and whether the manufactured home is new or used;
  - (2) (a) A statement that the party executing the affidavit is the owner of the real property described in the affidavit; or

- (b) If not the owner of the real property:
  - [1] A statement that the party executing the affidavit is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution of the affidavit; and
  - [2] The consent of the lessor of the real property endorsed upon or attached to the affidavit and acknowledged or proved in the manner as to entitle a conveyance to be recorded;
- (3) The street address and the legal description of the real property to which the manufactured home is or will be permanently affixed;
- (4) (a) If the manufactured home is not covered by a certificate of title, a statement by the owner to that effect, and either:
  - [1] A statement by the owner of the manufactured home that the manufactured home is covered by a manufacturer's certificate of origin, the date the manufacturer's certificate of origin was issued, the manufacturer's serial number, and a statement that annexed to the affidavit of affixation is the original manufacturer's certificate of origin for the manufactured home, duly endorsed to the owner of the manufactured home, and that the owner of the manufactured home will surrender the manufacturer's certificate of origin to the department of transportation; or
  - [2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home; or
- (b) If the manufactured home is covered by a certificate of title, either:
  - [1] A statement by the owner of the manufactured home that the manufactured home is covered by a certificate of title, the date the title was issued, the title number, and that the owner of the manufactured home will surrender the title; or
  - [2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the certificate of title for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;
- (5) A statement whether the manufactured home is subject to one or more security interests or liens and:
  - (a) If the manufactured home is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home, including each holder shown on any certificate of title issued by the department of transportation, the original principal amount secured by each security interest or lien, and a statement that the security interest or lien will be released; or
  - (b) A statement that each security interest in or lien on the manufactured home, if any, has been released, together with due proof of each release;
- (6) If the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title, a statement by the owner of the manufactured home to that effect and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;
- (7) A statement that the manufactured home is or will be permanently affixed to the real property;

- (8) If the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete the statement required by subsection 2 of section 11-18-02.2; and
    - (9) The name and address of a person designated for filing the recorded copy of the affidavit of affixation with the department of transportation to whom the recorder shall return the recorded copy of the affidavit of affixation after the affidavit has been duly recorded in the real property records as provided in subsection 5.
  - b. An affidavit of affixation must be duly acknowledged or proved in like manner as to entitle a conveyance to be recorded, and when so acknowledged or proved and upon payment of the lawful recording fees, the recorder shall immediately cause the affidavit of affixation and any attachments to the affidavit to be duly recorded and indexed under chapter 47-19.
  - c. The affidavit of affixation must be accompanied by an applicable fee for recording and issuing a recorded copy of the affidavit.
4. The act of permanently affixing a manufactured home to real property or the recording of the affidavit of affixation does not impair the rights of a holder of a security interest in or lien on a manufactured home perfected as provided in section 35-01-05.1, unless and until the due filing with and acceptance by the department of transportation of an application to surrender the title as provided in subsection 1 of section 39-05-35 and the release of the security interest or lien as provided in section 39-05-16.1. Upon the filing of a release, the security interest or lien perfected under section 35-01-05.1 is terminated.
  5. The affidavit of affixation must be presented for recording pursuant to chapter 47-19, together with the fees provided by law. Upon receipt from the recorder of a copy of the recorded affidavit of affixation by the person presenting the affidavit for recording, that person shall deliver for filing to the department of transportation the copy of the affidavit of affixation and the other documents as provided in subdivision d of subsection 2.
  6. A manufactured home is deemed to be real property when all of the following events have occurred:
    - a. The home is permanently affixed to land as provided in subsection 1;
    - b. An affidavit of affixation conforming to the requirements of subsection 3 has been recorded in the conveyance records in the office of the recorder in the county where the manufactured home is permanently affixed;
    - c. A copy of the recorded affidavit of affixation has been delivered for filing to the department of transportation as provided in subsection 5; and
    - d. The requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.
  7. Upon the satisfaction of the requirements of subsection 6, the manufactured home is deemed to be real property; any mortgage, deed of trust, lien, or security interest that can attach to land, buildings erected on the land, or fixtures affixed to the land attach as of the date of its recording in the same manner as if the manufactured home were built from ordinary building materials onsite. Title to the manufactured home must be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which the structure has been affixed. The manufactured home is deemed to be real property and is governed by the laws applicable to real property and the department of transportation has no further authority or jurisdiction over the conveyance or encumbrance of the manufactured home.
  8. Except as provided in subsections 2, 3, 5, 6, and 7, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property. An agreement by a party to the transaction by which the requirements of this subsection are waived is void as contrary to public policy.

9. Nothing in this section impairs any rights existing under law before July 1, 2009, of anyone claiming an interest in a manufactured home.