

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2307

2007 SENATE JUDICIARY

SB 2307

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2307**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2247

Committee Clerk Signature *Maria L. Solby*

Minutes: Relating to execution of judgment.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Malcolm Brown, on behalf of the Real Property Probate and Trust Sec., State Bar Assoc.

(meter :40) Gave Testimony – Att. #1

Sen. Fiebiger questioned (meter 5:12) on page 1, section 1 how did they arrive with the 60 day time frame. It's arbitrary, the publication time. Discussed what brought this on (meter 6:00). Are you forcing the creditor to do something in 60 days.? Discussion of process. (meter 6:30)

Sen. Lyson asked to hold the bill until the next day.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2307**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 3052

Committee Clerk Signature *Maria L. Solberg*

Minutes: Relating to execution of judgment.

Relating to **Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Lyson spoke of the civil process with the sheriffs concerns with the 1st and 2nd lien issues.

Sen. Fiebiger spoke of his conversations with attorneys in this field. (meter 1:09) They had some of the same thoughts. If the first person starts the process and pays all the fees and the attorneys then the second person comes and takes over after all of there work. The committee discussed that if this is an issue they will be back two years from now to fix the bill.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass SB 2307 and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2307**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3356

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to execution of judgment.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Lyson made the motion to reconsider the bill and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Mr. Brown had submitted an amendment – Att. #1 The amendment was easier to place on the bill in the committee than on the floor.

Discussion of: the amendment pertaining to the “period of reception” and how we forgot to add it in committee.

Sen. Lyson made the motion to Do Pass Amendment – Att. #1 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing

Date: 2-7-7

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2307

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Flebiger

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes _____ No _____

Absent _____

Floor Assignment Sen. Lyson

If the vote is on an amendment, briefly indicate intent:

Handwritten notes: RE INTO

REPORT OF STANDING COMMITTEE

SB 2307: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2307 was placed on the
Eleventh order on the calendar.

Sen. Nething
2/7/07

*into Called Back
Comm +
Voted on Amend.*

Proposed amendment to Senate Bill 2307:

Att #1
2-12-07

at line 20 page 9:

d. ~~When subject to~~ The period of redemption, ~~a statement to that effect and~~

Thanks a lot, and call if you have any questions.

Malcolm H. Brown
224-8825

REPORT OF STANDING COMMITTEE

SB 2307: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2307 was placed on the Sixth order on the calendar.

Page 9, line 20, remove "If", overstrike "subject to" and insert immediately thereafter "The period of", and overstrike ", a statement to that effect"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2307

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2307

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4515

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2307.

Malcolm Brown, Real Property, Probate and Trust Section, State Bar Association: (see attached testimony).

Rep. Klemin: Section 1 on this new procedure that you have here about the other lienholder doing the sheriff sale. Procedurally, what would happen if the first lienholder wanted to proceed to arrange a sheriff's sale after the second one had already started it. Would he be precluded from doing anything.

Malcolm Brown: The first party lienholder wouldn't have to. In other words, if the second lienholder has the sheriff sale, that starts it, if somebody bids in, let's say it's a junior creditor, obviously they would be subject to the first lienholder's amount. When the period of redemption expires, the first lienholder would be paid, so they wouldn't be required to notice their own sale.

Rep. Klemin: I guess I've had a lot of sheriff's sales that I've been involved in, but I've never seen one where they didn't proceed to the sheriff's sale. Why wouldn't they do that.

Malcolm Brown: There was an example discussed at one of our meetings; the first lienholder was taking their time and didn't do it, and the second lienholder wanted to do it. This is strictly

permissive, it would enable the second lienholder to do that. It probably wouldn't come up very often, but it sometimes does.

Rep. Koppelman: On page 2, beginning on line 5, section dealing with sale of property, is that real property or personal property. Is there a difference there or does property there include both.

Malcolm Brown: I believe it is the intent of the amendment that the property was intended to be both real and personal.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2307

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/14/07

Recorder Job Number: 5022

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2307. What are the committee's wishes.

Rep. Meyer: This is the bill that I was having trouble with, in addressing section 1, what happens in these cases where a lot of times the first lienholder is the FSA and the secondary lender is your bank. If this would pass, and we ran into this before where the FSA is not willing to proceed and the bank wanted to. This bill would allow that to happen and I guess I am opposed to the bill for that reason.

Rep. Klemin: I do not quite understand what you're talking about, because I think this is just clarifying language that can happen right now. Just because one judgment creditor doesn't go forward, doesn't mean that another judgment creditor can't.

Rep. Meyer: It was my understanding that a secondary creditor can't go forward unless the first one does. It comes into play, as I stated, on these national FSA loans, when you have a mortgage and they are your primary lender, and your bank is the secondary lender. At this point, they can't go forward without the FSA going along, they are willing to work with you. The bank cannot go forward. If this would pass, the bank can go forward as a secondary lender.

Rep. Klemin: Yes, as well as any other party that had a lien on the property.

Rep. Meyer: Correct, that's why I am opposed.

Rep. Griffin: When the government has a mortgage, and they are not foreclosing on it, then no one can foreclose.

Chairman DeKrey: Otherwise it would hold the bank up.

Rep. Griffin: Yes.

Rep. Klemin: I move a Do Pass on this bill.

Rep. Dahl: Second.

Rep. Onstad: This really doesn't distinguish between a 1st, 2nd, 3rd, etc., mortgage on there, a person could have 95% of that as a first mortgage, and somebody else could have a minimal portion of that remainder. They would have the same rights as the majority stockholder. I can't see somebody who has a \$10,000 loan and the first lienholder which might have a \$100,000 loan, and now the \$10,000 lienholder could go ahead and foreclose.

Rep. Klemin: They've still got quite a bit of time because of the procedural requirements for getting the special execution, publishing a notice of sale, having a sale, and then the redemption period follows after that. All during that period of time, they can continue to try and work it out. This doesn't only apply to somebody that has a second mortgage on the property it also applies to somebody who has a judgment on there, who now's basically been held up, and can't do anything about enforcing their judgment because they've been joined in the foreclosure sale as a junior creditor. This allows any other lienholder, not just a mortgage holder, to proceed with that special execution. If the judgment creditor doesn't proceed within 60 days after entry of judgment. First of all, they have to wait the 60 days, then they have to get the special execution issued, then they've got to publish the notice, three times I believe, and then the sheriff's sale can't be any earlier than the last sale, you're out to about 4 months after the judgment before we even get to the earliest that we could have the sheriff's sale. Then we've got the redemption period following that. How much time do you need.

Rep. Meyer: That's my point. That inferior creditor, they could demand, four months is nothing in a farm and ranch situation, we only have yearly income. You have a chance that you could redeem this, there is no definition of inferior creditor. If you were, for example, having hay, there is no definition of that, if you've got a real estate mortgage for \$1.5 million dollars and you've got an inferior creditor that has \$40,000 on your hay that you owe him, he could force this to go forward. Four months may seem like a long time, but in the farm and ranch scenario, you have a cash crop once a year, or a hay crop once a year, and you have an inferior creditor, regardless of how inferior he could be, that is my whole problem with this. He could force this property to be sold.

Rep. Klemin: The four months is the minimum time that it would take to get to the sheriff's sale, you've still got a year after that to redeem. So the minimum time we're talking about is 16 months, not 4 months.

Rep. Koppelman: How does the redemption period work. That's after the sale.

Rep. Klemin: In case of farm property, in other property it may be different.

Rep. Koppelman: So what does that mean. Unless a sale is conducted within that period of time, to do what.

Rep. Klemin: They have one year in which to come in and pay off that foreclosure judgment, during which time, they keep possession of the property. So when we're talking about the one year, that's tacked on to the point where we get to the sheriff's sale; under this would probably be about 4 months from the judgment at a minimum.

Rep. Koppelman: But in the sheriff's sale, somebody could buy it.

Rep. Klemin: The sheriff's sale, typically, the creditor, mortgage creditor that started the foreclosure is going to come in and bid in the amount of their judgment. There's not going to be any actual money taken.

Rep. Koppelman: It's a public sale, right. What if somebody, a third party, comes along and buys that.

Rep. Klemin: It's no different, it's just somebody else holding the sheriff's certificate of sale then instead of the mortgage creditor, who's gone.

Rep. Koppelman: They purchased a house and then the person has a redemption period of sale, even the mortgage creditors.

Rep. Klemin: Yes, absolutely. It doesn't make any difference who buys it at the sheriff's sale.

Rep. Koppelman: And if it is redeemed, they get to keep the property even though it's been sold, because what they are really buying is the debt.

Rep. Klemin: No, because it's been sold at a sheriff's sale and what the person at the sale is buying at the sheriff's sale is the sheriff's certificate of sale, which will entitle them to a deed at the end of the redemption period if there is no redemption.

Rep. Onstad: Those people who are holding the judgment after the sheriff's sale, they have the chance to redeem that so that the person who holds the sheriff's certificate, if they want to redeem that, they have to also pay them too.

Rep. Klemin: They could also redeem, but in order to do that, they have to pay off everyone ahead of them, which a lot of times would mean that they are paying out more than the property is worth. So, for all practical purposes, that's pretty rare.

Chairman DeKrey: Clerk will call the roll.

7 YES 5 NO 2 ABSENT

DO PASS

CARRIER: Rep. Kretschmar

Date: 3/14/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2307

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Klemin Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging			Rep. Onstad		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 10:43 a.m.

Module No: HR-48-5265
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2307, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2307 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2307

AH #1
1-30-07

Senate Judiciary Committee
January 30, 2007

Senate Bill 2307

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Chapter 28-21 NDCC deals with Execution of the Judgment. "Execution" can mean either collection of money or property or enforcement of a judgment. This chapter outlines the procedures for doing so.

Many of the proposed changes are clean up. I noticed that some sections of this chapter had last been revised in 1943, so it does not hurt to review the entire chapter to see how it lives up to current practice.

New or revised sections are as follows;

Section 1 adds language to 28-21-01 that would permit a second mortgage holder, or other inferior creditor, to have the subject property sold at sheriffs sale. This would not change the order of priority, but would permit an inferior creditor to have the property sold in order to realize on any equity in the property.

Section 3 creates a new 28-21-03.1 to specifically state that a judgment may be enforced by execution.

Section 5 creates a new 28-21-04.1 to state how a judgment for other than money or delivery of property may be enforced.

Section 6 is not new but a re-arrangement of what was 28-~~1~~²¹-04.1 is now 28-21-04.2

The remainder of this bill just cleans up existing language, and Section 17 adds a new sub-section to the requirements of a sheriffs certificate that the names of the parties to the foreclosure action must also be recited in the certificate.

(Revisions to Chapter 28-21 were drafted by Robert Stroup, a lawyer from Fargo, member of this Section and Chairman of the Title Standards Committee).

Senator David Nething
Chairman
Senate Judiciary Committee

February 6, 2007

Hi Dave:

Our Section of the Bar Association requested the introduction of several bills, some heard by your committee. You heard SB 2307 on January 30, but, to my knowledge have not yet acted upon it. We are also involved in SB 2277 to be heard by the Senate Agriculture committee this Friday, February 9.

Both SB 2307 and SB 2277 propose to amend Sec. 28-23-11 NDCC regarding the contents of a sheriffs certificate after an execution sale. The language proposed in SB 2307 is better and I will request amendments to that effect when I testify on SB 2277. However I would request one minor amendment to SB 2307 as follows:

Proposed amendment to Senate Bill 2307:

Att #1

2-12-07

at line 20 page 9:

d. ~~When subject to~~ The period of redemption, a statement to that effect and

Thanks a lot, and call if you have any questions.

Malcolm H. Brown
224-8825

House Judiciary Committee
March 7, 2007

Senate Bill 2307

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Chapter 28-21 NDCC deals with Execution of the Judgment. "Execution" can mean either collection of money or property or enforcement of a judgment. This chapter outlines the procedures for doing so.

Many of the proposed changes are clean up. I noticed that some sections of this chapter had last been revised in 1943, so it does not hurt to review the entire chapter to see how it lives up to current practice.

New or revised sections are as follows;

Section 1 adds language to 28-21-01 that would permit a second mortgage holder, or other inferior creditor, to have the subject property sold at sheriffs sale. This would not change the order of priority, but would permit an inferior creditor to have the property sold in order to realize on any equity in the property.

Section 3 creates a new 28-21-03.1 to specifically state that a judgment may be enforced by execution.

Section 5 creates a new 28-21-04.1 to state how a judgment for other than money or delivery of property may be enforced.

Section 6 is not new but a re-arrangement of what was 28-21-04.1 is now 28-21-04.2

The remainder of this bill just cleans up existing language, and Section 17 adds a new sub-section to the requirements of a sheriffs certificate that the names of the parties to the foreclosure action must also be recited in the certificate. This aids title examiners as often there are inferior liens that are made defendants in the foreclosure, but are not now named in the sheriffs certificate.

(Revisions to Chapter 28-21 were drafted by Robert Stroup, a lawyer from Fargo, member of this Section and Chairman of the Title Standards Committee).