

LIENS

CHAPTER 265

SENATE BILL NO. 2292

(Senators Meyer, Holmberg, Patten)
(Representative O'Brien)

AN ACT to create and enact section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications; and to amend and reenact sections 35-03-14 and 35-03-15 of the North Dakota Century Code, relating to the expiration and extension of real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-14 of the North Dakota Century Code is amended and reenacted as follows:

35-03-14. Expiration of real estate mortgages.

1. Unless extended or modified as specified in ~~section~~sections 35-03-15 and 35-03-15.1, the lien created by a mortgage of North Dakota real estate and all notice from the record ~~thereof~~ the lien expires as to all persons and for all purposes as follows:
 1. a. If the final maturity date is ascertainable from the record of the mortgage, the lien of the mortgage expires ten years after ~~that~~the final maturity date.
 2. b. If the final maturity date of the mortgage is not ascertainable from the record, the lien of the mortgage expires ten years after the date the mortgage is filed for record in the office of the recorder.
2. Expiration of a mortgage lien under ~~the provisions~~ of this section is equivalent for all purposes to proper discharge of the mortgage of record, and execution or recordation of a discharge instrument is not necessary to terminate a mortgage lien ~~which~~that has ~~so~~ expired. Satisfaction of mortgage in the common form may be recorded at any time.
3. Expiration of a mortgage lien as provided ~~herein~~ in this section occurs notwithstanding that the right to foreclose the mortgage has not been or might not be barred by the defense of limitations, whether tolled by nonresidence, disability, death, part payment, acknowledgment, extension, new promise, or waiver, and occurs notwithstanding any provisions of the Federal Soldiers' and Sailors' Civil Relief Act.

SECTION 2. AMENDMENT. Section 35-03-15 of the North Dakota Century Code is amended and reenacted as follows:

35-03-15. Extension of mortgage - Expiration delayed - Retroactivity.

1. ~~Expiration of a real estate mortgage lien as provided in sections 35-03-14 and 35-03-15.1 does not occur if prior to the date such the expiration otherwise would become effective:~~
 1. ~~a. An action or proceeding to foreclose is timely and properly commenced and the summons and complaint in such the action are duly filed with the clerk of the court having jurisdiction, and there is duly recorded in the office of the recorder a special notice of the pendency of such the action, or of the pendency of a proceeding to foreclose by advertisement;~~
 2. ~~b. A proceeding to foreclose by advertisement is commenced and a special notice of the pendency of the proceeding is recorded in the office of the recorder.~~
 - c. There is duly recorded in the office of the recorder the statutory notice of intention to foreclose with proof of service;
 3. ~~d. A deed in lieu of foreclosure purporting to continue the mortgage lien unmerged in the fee title is duly recorded in the office of the recorder;~~
 4. ~~e. Actual possession of the mortgaged property is taken and held by the owner of the mortgage, or the owner of the mortgage recorded a notice of enforcement of an assignment of rents related to the mortgaged property; or~~
 5. ~~f. An instrument by or on behalf of an interested party the owner of the mortgage or the owner's authorized agent in affidavit form asserting extension and continuation of the mortgage lien is duly recorded in the office of the recorder of the county in which the affected mortgaged real estate or some portion thereof of the affected mortgaged real estate is situated, provided that no such instrument is effective to postpone expiration of a mortgage lien under this section for more than ten years beyond the date expiration would have become effective under section 35-03-14, unless the lien was modified under section 35-03-15.1.~~
2. ~~The provisions of section 35-03-14 and this section apply to all mortgages, including those executed or recorded before the effective date of said sections section 35-03-14 and this section. The provisions of said sections section 35-03-14 and this section do not bar any action, preclude except foreclosure or enforcement of any lien, or cause any mortgage lien to expire, until January 1, 1964.~~

SECTION 3. Section 35-03-15.1 of the North Dakota Century Code is created and enacted as follows:

35-03-15.1. Modification of mortgage - Expiration delayed.

1. Expiration of a real estate mortgage under section 35-03-14 does not occur if before the date the expiration would become effective a mortgage modification is recorded in the office of the recorder. A modified mortgage expires as provided under section 35-03-14, unless the modified mortgage is extended under section 35-03-15 or subsequently modified. If a modified mortgage is extended or subsequently modified, the mortgage expires as follows:

- a. If the final maturity date is ascertainable from the record of the mortgage modification, the lien of the mortgage expires ten years after the final maturity date.
 - b. If the final maturity date of the mortgage is not ascertainable from the record of the original mortgage or a mortgage modification, the lien of the mortgage expires ten years after the date the last mortgage modification is filed for record in the office of the recorder.
2. As used in this section, "mortgage modification" means a written instrument amending at least one term of an original mortgage which:
- a. References the original mortgage by recording date and document number; and
 - b. Is signed by the mortgagor, or the mortgagor's successor in interest, and the owner of the mortgage.

Approved April 1, 2021

Filed April 1, 2021

CHAPTER 266

HOUSE BILL NO. 1366

(Representatives Vigesaa, D. Ruby, Weisz, Westlind)
(Senators Bakke, Clemens, Dwyer)

AN ACT to create and enact a new section to chapter 35-13 of the North Dakota Century Code, relating to the nonjudicial disposition of property by lienholders; and to amend and reenact sections 35-13-01, 35-13-04, 35-13-05, and 35-13-06 of the North Dakota Century Code, relating to repairman's liens, priority of liens, notice requirements, and assignments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

35-13-04. Priority of lien.

A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the ~~recordholder of the mortgage or financing statement~~lienholder of record as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or financing statement~~lienholder of record, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the ~~mortgage or financing statement~~existing liens of record, then only that portion of the repairman's lien up to ~~four~~six thousand dollars or thirty

percent, or ~~ninefifteen~~ thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the ~~mortgage or financing statement~~ existing lien of record.

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

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

1. A person holding a lien under this chapter on property ~~which has been encumbered previously by mortgage, by prior liens of record or~~ before beginning any action or proceeding for the foreclosure of the lien, shall give ~~twenty~~ ten days' notice in writing of the lienholder's intention to foreclose the lien to the ~~recordholder of the mortgage~~ lienholders of record and the owner of the property. The notice may be served by registered or certified mail addressed to the ~~recordholder~~ lienholders of record and property owner at the ~~recordholder's~~ lienholders and property owner's last-known post-office address.
2. The notice before foreclosure must include:
 - a. A description of the property subject to the lien;
 - b. The grounds for the lien;
 - c. The name, address, and telephone number of the lienholder;
 - d. The amount owed;
 - e. The date after which the property subject to the lien will be offered for sale; and
 - f. A statement that the lienholder of record or property owner may reclaim the property subject to the lien before the property is offered for sale by paying the amount owed.

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

35-13-06. ~~Mortgagee~~ Lienholder may pay amount of lien - Assignment of lien.

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

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

Nonjudicial disposition of property.

The person holding a lien under this chapter has the rights of a secured party under article nine of the Uniform Commercial Code for purposes of nonjudicial

disposition of the property. A person holding a lien under this chapter who chooses to use nonjudicial disposition of the property shall dispose of the property in the manner prescribed for security interests under article nine of the Uniform Commercial Code.

Approved March 25, 2021

Filed March 26, 2021

CHAPTER 267

SENATE BILL NO. 2330

(Senators Burckhard, Klein, Lemm)
(Representatives Keiser, Lefor)

AN ACT to create and enact a new section to chapter 35-33 of the North Dakota Century Code, relating to the rights of owners of self-service storage facilities; and to amend and reenact sections 35-33-01, 35-33-02, 35-33-03, 35-33-04, 35-33-05, 35-33-07, 35-33-09, and 35-33-10 of the North Dakota Century Code, relating to self-service storage facility liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-33-01 of the North Dakota Century Code is amended and reenacted as follows:

35-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Default" means failure of the occupant to ~~pay the rent and other charges~~ perform any obligation or duty at the time and in the manner set forth in the rental agreement or under this chapter.
2. "Last-known address" means the postal or electronic mail address provided by the occupant in the latest rental agreement or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address.
3. "Occupant" means the person who rents storage space at a self-service storage facility under a rental agreement, or a sublessee, successor, or assignee.
4. "Owner" means any person who owns, leases, subleases, manages, or operates a self-service storage facility and, or the owner's designee, who receives rent from an occupant under a rental agreement.
5. "Personal property" means movable property not affixed to land, including merchandise and household goods.
6. "Rental agreement" means a written agreement between the owner and the occupant which establishes or modifies the terms and conditions of the occupant's use of storage space at a self-service storage facility.
7. "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which occupants customarily store and remove their personal property. The term does not include a garage used principally for parking motor vehicles; any property of a financial institution which contains vaults, safe deposit boxes, or other receptacles for the purposes and benefits of the financial institution's customers; or a warehouse

or a public warehouse where warehouse receipts, bills of lading, or other documents of title are issued for the personal property stored.

8. "Storage space" means an enclosure, cubicle, or room that is fully enclosed and equipped with a door designed to be locked for security in individual space at a self-service storage facility which is rented or leased by the occupant under a rental agreement.
9. "Verified mail" means any method of mailing offered by the United States postal service or a private delivery service which includes evidence of mailing.

SECTION 2. AMENDMENT. Section 35-33-02 of the North Dakota Century Code is amended and reenacted as follows:

35-33-02. Lien against property - Value limit - Late fee.

1. The owner of a self-service storage facility has a lien on all personal property stored under a rental agreement in a storage space at the self-service storage facility for rent, labor, late fees, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default serviced or delivered to the occupant as provided in this chapter.
2. If the rental agreement specifies a limit on the value of personal property the occupant may store in the storage space, the limit is deemed to be the maximum value of the personal property in the occupant's storage space.
3. The owner of a self-service storage facility may charge a late fee of twenty dollars or twenty percent of a delinquent monthly rent payment due under the rental agreement, whichever is greater, for each delinquent payment of rent, fees, or other charges due under the rental agreement.

SECTION 3. AMENDMENT. Section 35-33-03 of the North Dakota Century Code is amended and reenacted as follows:

35-33-03. Denial of access - Disposal of property.

If the occupant is in default, the owner may deny the occupant access to the leased storage space and enforce the lien by selling the property stored in the leased storage space. Sale of the property may be by public or private proceeding and may also be as a unit or in parcels. After the proceeding, the owner may dispose of any property that was offered for sale but which remained unsold.

SECTION 4. AMENDMENT. Section 35-33-04 of the North Dakota Century Code is amended and reenacted as follows:

35-33-04. Custody and control of property.

Unless the rental agreement provides otherwise, until a sale under this chapter, the occupant is responsible for the care, custody, and control of all property stored in the leased storage space, unless the owner secures the property elsewhere during the sale proceedings.

SECTION 5. AMENDMENT. Section 35-33-05 of the North Dakota Century Code is amended and reenacted as follows:

35-33-05. Notice of proceedings.

Before conducting a sale, the owner shall:

1. Deliver in person or send by ~~certified~~verified mail or electronic mail a notice of default to prior lienholders and to the occupant at the occupant's last-known address. A notice under this section sent by verified mail is ~~presumed~~deemed delivered if it is deposited with the United States postal service or a private delivery service and properly addressed with postage prepaid. A notice under this section sent by electronic mail is deemed delivered if it is sent to the occupant's last-known electronic mail address. The notice must include:
 - a. A statement that the contents of the occupant's ~~leased~~storage space are subject to the owner's lien and that the occupant is denied access to the property until the owner's claim is satisfied;
 - b. The address of the self-service storage facility, the number of the space where the personal property is located, and the name of the occupant;
 - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, not less than ten days after the date of notice;
 - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the occupant's ~~leased~~storage space will be sold; and
 - e. The name, address, and telephone number of the owner or a designated agent whom the occupant may contact to respond to the notice.
2. ~~Publish, once a week for two consecutive weeks, with the first publication not more than thirty days before the sale and the last publication at~~ At least seven days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the county where the self-service storage facility is ~~located~~commercially reasonable manner. An advertisement satisfies the requirements of this subsection if at least three independent bidders attend the sale in person or online at the time and place advertised.

SECTION 6. AMENDMENT. Section 35-33-07 of the North Dakota Century Code is amended and reenacted as follows:

35-33-07. Protection of purchaser in good faith.

A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, ~~subject to the rights of prior lienholders.~~

SECTION 7. AMENDMENT. Section 35-33-09 of the North Dakota Century Code is amended and reenacted as follows:

35-33-09. Validity of certain rental agreements.

Any rental agreement entered before August 1, ~~1997~~2021, remains valid and may be enforced or terminated in accordance with its terms or as permitted by any other law of this state.

SECTION 8. AMENDMENT. Section 35-33-10 of the North Dakota Century Code is amended and reenacted as follows:

35-33-10. Sale proceedings - Titled vehicles - Towing.

1. The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority necessary to obtain a transfer of title to vehicles under section 39-05-19.
2. If the personal property subject to a lien under section 35-33-02 is a motor vehicle, watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from the self-service storage facility property by a commercial towing service as defined in section 23.1-15-01. An owner may not be held liable for damage incurred to an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility property. Removal of personal property from a self-service storage facility does not release the owner's lien under section 35-33-02.

SECTION 9. A new section to chapter 35-33 of the North Dakota Century Code is created and enacted as follows:

Owner rights - Chapter construction.

This chapter may not be construed as impairing or affecting the right of an owner and an occupant to create additional rights, duties, or obligations under a rental agreement. In addition to the rights and remedies under this chapter, an owner has the same rights and remedies available to creditors and landlords under the laws of this state.

Approved March 23, 2021

Filed March 24, 2021