

Introduced by

Senators Meyer, Holmberg, Patten

Representative O'Brien

1 A BILL for an Act to create and enact section 35-03-15.1 of the North Dakota Century Code,
2 relating to mortgage modifications; and to amend and reenact sections 35-03-14 and 35-03-15
3 of the North Dakota Century Code, relating to the expiration and extension of real estate
4 mortgages.

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

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

8 **35-03-14. Expiration of real estate mortgages.**

- 9 1. Unless extended or modified as specified in ~~section~~sections 35-03-15 and 35-03-15.1,
10 the lien created by a mortgage of North Dakota real estate and all notice from the
11 record ~~thereof~~of the lien expires as to all persons and for all purposes as follows:
- 12 4. a. If the final maturity date is ascertainable from the record of the mortgage, the lien
13 of the mortgage expires ten years after ~~that~~the final maturity date.
- 14 2. b. If the final maturity date of the mortgage is not ascertainable from the record, the
15 lien of the mortgage expires ten years after the date the mortgage is filed for
16 record in the office of the recorder.
- 17 2. Expiration of a mortgage lien under ~~the provisions~~ of this section is equivalent for all
18 purposes to proper discharge of the mortgage of record, and execution or recordation
19 of a discharge instrument is not necessary to terminate a mortgage lien ~~which~~that has
20 ~~se~~ expired. Satisfaction of mortgage in the common form may be recorded at any time.
- 21 3. Expiration of a mortgage lien as provided ~~herein~~in this section occurs notwithstanding
22 that the right to foreclose the mortgage has not been or might not be barred by the
23 defense of limitations, whether tolled by nonresidence, disability, death, part payment,

1 acknowledgment, extension, new promise, or waiver, and occurs notwithstanding any
2 provisions of the Federal Soldiers' and Sailors' Civil Relief Act.

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

5 **35-03-15. Extension of mortgage - Expiration delayed - Retroactivity.**

6 1. Expiration of a real estate mortgage lien as provided in ~~section~~sections 35-03-14 and
7 35-03-15.1 does not occur if prior to the date ~~such~~the expiration otherwise would
8 become effective:

9 1. a. An action or proceeding to foreclose is timely and properly commenced and the
10 summons and complaint in ~~such~~the action are duly filed with the clerk of the court
11 having jurisdiction, and there is duly recorded in the office of the recorder a
12 special notice of the pendency of ~~such~~the action, or of the pendency of a
13 proceeding to foreclose by advertisement;

14 2. b. A proceeding to foreclose by advertisement is commenced and a special notice
15 of the pendency of the proceeding is recorded in the office of the recorder.

16 c. There is duly recorded in the office of the recorder the statutory notice of intention
17 to foreclose with proof of service;

18 3. d. A deed in lieu of foreclosure purporting to continue the mortgage lien unmerged
19 in the fee title is duly recorded in the office of the recorder;

20 4. e. Actual possession of the mortgaged property is taken and held by the owner of
21 the mortgage, or the owner of the mortgage recorded a notice of enforcement of
22 an assignment of rents related to the mortgaged property; or

23 5. f. An instrument by or on behalf of ~~an interested party~~the owner of the mortgage or
24 the owner's authorized agent in affidavit form asserting extension and
25 continuation of the mortgage lien is duly recorded in the office of the recorder of
26 the county in which the affected mortgaged real estate or some portion thereof
27 the affected mortgaged real estate is situated, provided that no ~~such~~ instrument is
28 effective to postpone expiration of a mortgage lien under this section for more
29 than ten years beyond the date expiration would have become effective under
30 section 35-03-14, unless the lien was modified under section 35-03-15.1.

1 2. The provisions of section 35-03-14 and this section apply to all mortgages, including
2 those executed or recorded before the effective date of ~~said section~~section 35-03-14
3 and this section. The provisions of ~~said section~~section 35-03-14 and this section do
4 not bar any action, ~~preclude~~except foreclosure or enforcement of any lien, or cause
5 any mortgage lien to expire, until January 1, 1964.

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

8 **35-03-15.1. Modification of mortgage - Expiration delayed.**

- 9 1. Expiration of a real estate mortgage under section 35-03-14 does not occur if before
10 the date the expiration would become effective a mortgage modification is recorded in
11 the office of the recorder. A modified mortgage expires as provided under section
12 35-03-14, unless the modified mortgage is extended under section 35-03-15 or
13 subsequently modified. If a modified mortgage is extended or subsequently modified,
14 the mortgage expires as follows:
- 15 a. If the final maturity date is ascertainable from the record of the mortgage
16 modification, the lien of the mortgage expires ten years after the final maturity
17 date.
- 18 b. If the final maturity date of the mortgage is not ascertainable from the record of
19 the original mortgage or a mortgage modification, the lien of the mortgage
20 expires ten years after the date the last mortgage modification is filed for record
21 in the office of the recorder.
- 22 2. As used in this section, "mortgage modification" means a written instrument amending
23 at least one term of an original mortgage which:
- 24 a. References the original mortgage by recording date and document number; and
25 b. Is signed by the mortgagor, or the mortgagor's successor in interest, and the
26 owner of the mortgage.