

2021 SENATE POLITICAL SUBDIVISIONS

SB 2191

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2191
1/22/2021

A BILL for an Act to amend and reenact section 32-19-41 of the North Dakota Century Code, relating to the disposal of abandoned personal property

Chairman Burckhard opened the hearing on SB 2191 at. All members present: Senators Burckhard, Anderson, Kannianen, Oban, Heitkamp, Lee, D. Larson.

Discussion Topics:

- Handling of abandoned property
- Streamline the foreclosure process for abandoned property
- Provide protection for owners and reunite them with their lost or abandoned property

[10:44] **Senator Holmberg, District 17.** Introduced SB 2191

[10:45] **Nick Hacker, ND Land and Title Association.** Testified in favor #2047

[10:52] **Dean Rindy, Attorney, Fargo.** Testified in favor #1586.

[10:59] **Rick Clayburgh, President CEO, ND Bankers Association.** Testified in favor

[11:00] **Barry Haugen,** President, Independent Community Banks of ND Testified in favor.

[11:05] **Susan Dollinger** on behalf of Jodi Smith, Commissioner and Secretary for the Board of University and School Lands. Provided testimony #2210 in favor.

Chairman Burckhard closed the hearing on SB 2191 at 11:20 a.m.

[11:17] **Senator Larson** moves to adopt the amendment LC 21.0620.02001

[11:17] **Senator Oban** seconded the motion

[11:17] Roll Call Vote

[11:18] Motion passed 7-0-0

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

[11:18] **Senator Oban** moves DO PASS as amended

[11:18] **Senator Kannianen** seconded the motion

[11:18] Roll Call Vote

[11:18] Motion passed 7-0-0

[11:19] **Senator Burckhard** will carry SB 2191

Senator Burckhard adjourned 11:19 AM

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

Patricia Lahr, Committee Clerk

January 22, 2021

CJ
1/22
1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2191

Page 2, after line 1, insert:

- "6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2191: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2191 was placed on the Sixth order on the calendar.

Page 2, after line 1, insert:

"6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1."

Renumber accordingly

Senate Political Subdivisions Hearing on SB 2191

Testimony from North Land Title Association

Nick Hacker

nick@thetitleteam.com

(240) 688-2210

Chairman Burckhard, Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association as well as President of North Dakota Guaranty and Title Co.

Our industry provides abstracting, title insurance and real estate closing services in every county of the state. We serve as the independent third party to real estate transactions including services during the foreclosure process. Through that work, we provide assurances to protect parties acquiring title that title is free and clear of liens and encumbrances. Within the foreclosure process we provide reports and research to the foreclosing entity and attorney regarding the condition of title and then ultimately protect the bona fide third party purchaser.

SB 2191 follows the adoption of SB 2205 last session to streamline the foreclosure process for abandoned property without negatively affecting consumers or the integrity of title. Last session, personal property left abandoned on the real property was inadvertently missed in that bill and is causing some delays in the foreclosure of the real property that has been abandoned. We support these efforts which are positive for the marketability of title and support the health of the real estate market, especially during a time when housing supply is extremely low. The faster we can safely move this portion of the housing inventory back to the market, the better the market can function. Further, we believe the shorter amount of time a property unnecessarily sits in the foreclosure process, the more costly it is for lenders which ultimately impacts home affordability.

Thank you for your support and consideration of SB 2191

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.



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2191

**Senate Political Subdivisions Committee
January 22, 2021**

Chairman Burckhard and members of the Senate Political Subdivisions Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of Senate Bill 2191.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

Additionally, the Department administers the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role, the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), processes owners' claims and engages in holder compliance. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF. The primary function of the Unclaimed Property Division is to provide protection for owners and reunite them with their lost or abandoned property. A secondary function is to take, hold, and use for the common good, property which has been lost or abandoned and for which there is no way to identify the owner nor the ability to restore the property to its owner. In those situations, the generally accepted policy is the citizens enjoy the benefit from this property rather than the holder of the property.

The Department would like to offer the following amendment to provide guidance in the event the rightful owner cannot be located:

Page 2, line 1 insert:

"6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1."

Renumber accordingly

I look forward to working with the committee on this amendment and would be happy to answer any questions.

Jodi A. Smith COMMISSIONER

1707 North 9th Street | P.O. Box 5523 | Bismarck, ND 58506-5523

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2021 HOUSE POLITICAL SUBDIVISIONS

SB 2191

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

SB 2191
3/4/2021

Relating to the disposal of abandoned personal property.

Chairman Dockter: (9:00). Opened the committee hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	A

Discussion Topics:

- Foreclosure
- Entry of Judgment

Sen. Holmberg: Introduced the bill.

Dennis Pathroff, ND Land Title Association: No written testimony. Testified orally.

Nick Hacker, North Dakota Land Title Association: Testimony #7250.

Dean Rindy, Real Estate Attorney: Testimony #7337.

Rick Clayburgh, President and CEO of NDBA: No written testimony. Testified orally.

Chairman Dockter: (9:34). Closed the hearing.

Carmen Hickle, Committee Clerk

House Political Subdivisions Hearing on SB 2191

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

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

SB 2191
3/11/2021

Relating to the disposal of abandoned personal property

Chairman Dockter: (2:27). Opened for committee work.

Representatives	Vote
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	A
Representative Marvin E. Nelson	P
Representative Nathan Toman	P

Discussion Topics:

- Committee work
- Adjudicated to be abandoned

Rep. Klemin: Made a do pass motion.

Rep. Longmuir: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	A
Representative Marvin E. Nelson	N

Representative Nathan Toman	N
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9-3-1 carried.

Rep. Cory: Will carry the bill.

Chairman Dockter: (2:32). Closed committee work

Carmen Hickle, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2191, as engrossed: Political Subdivisions Committee (Rep. Dockter, Chairman)
recommends **DO PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2191 was placed on the Fourteenth order on the calendar.