PROPERTY

CHAPTER 339

HOUSE BILL NO. 1367

(Representatives Schatz, Brabandt, Louser)
(Senators Nodland, Schaible)

AN ACT to amend and reenact sections 47-10.1-05 and 47-10.1-06 of the North Dakota Century Code, relating to reports of agricultural land ownership by aliens; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

47-10.1-05. Reports.

~~Any individual, partnership, limited partnership, limited liability company, trustee, or other business entity prohibited from future acquisition of agricultural land may retain title to any agricultural land within this state acquired prior to July 1, 1979, but it shall file a report with the agriculture commissioner by October 1, 1979, and annually before July first thereafter, containing a description of all agricultural land held within this state, the purchase price and market value of the land, the use to which it is put, the date of acquisition, and any other reasonable information required by the commissioner.~~ The commissioner shall monitor for compliance with this chapter all reports transmitted to the commissioner pursuant to the Agricultural Foreign Investment Disclosure Act of 1978 [7 U.S.C. 3501 et seq.]. The commissioner shall make the ~~information~~reports available to the public.

SECTION 2. AMENDMENT. Section 47-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

47-10.1-06. Penalty.

~~Willful failure to properly register any parcel of land as required by section 47-10.1-05; recording, with knowledge, of any instrument in violation of~~Any person violating section 47-10.1-02~~; or any other failure to comply with the provisions of sections 47-10.1-01 through 47-10.1-05~~ is guilty of a class A misdemeanor.

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 340

SENATE BILL NO. 2195

(Senators Olafson, Lyson, Schneider)
(Representatives Delmore, N. Johnson, Maragos)

AN ACT to create and enact a new subsection to section 47-16-17.1 of the North Dakota Century Code, relating to remedies for termination of a lease due to domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 47-16-17.1 of the North Dakota Century Code is created and enacted as follows:

> In an action for a violation of this section, the court may award statutory damages of one thousand dollars. The court also may award actual damages, reasonable attorney's fees, costs, and disbursements.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 341

SENATE BILL NO. 2149

(Senators Grindberg, J. Lee, Robinson)
(Representatives Gruchalla, Klemin, Louser)

AN ACT to create and enact chapter 47-33 of the North Dakota Century Code, relating to a prohibition on private transfer fee obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 47-33 of the North Dakota Century Code is created and enacted as follows:

47-33-01. Definitions.

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

1. "Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept this transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The term does not include:

   a. Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, provided the additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

   b. Any commission payable to a licensed real estate broker for the transfer of real property under an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property.

   c. Any interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration and payable to the lender in connection with the loan.

   d. Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor

for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

e. Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

f. Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

g. Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association under a declaration or covenant or law applicable to the association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

h. Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.

i. Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

2. "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant, or agreement, or to the declarant's or other person's successors or assigns, upon a subsequent transfer of an interest in the real property.

3. "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

47-33-02. Prohibition on private transfer fee obligation.

A private transfer fee obligation recorded or entered in this state on or after the effective date of this Act does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered in this state on or after the effective date of this Act is void and unenforceable. This section does not mean that a private transfer fee obligation recorded or entered in this state before the effective date of this Act is presumed valid and enforceable.

47-33-03. Liability for violation.

Any person that records or enters an agreement imposing a private transfer fee obligation in that person's favor on or after the effective date of this Act is liable for any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is deemed assessed to the principal, rather than the agent.

47-33-04. Disclosure.

A seller of real property shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement must include a description of the private transfer fee obligation and must include a statement that private transfer fee obligations are subject to certain prohibitions under this chapter.

47-33-05. Notice requirements for existing transfer fee obligations.

1. For a private transfer fee obligation imposed before the effective date of this Act, the receiver of the fee shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation a separate document in the county records in which the real property is located that meets all of the following requirements:

    a. The title of the document must be "Notice of Private Transfer Fee Obligation" in at least fourteen-point boldfaced type;

    b. The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or the other basis by which the transfer fee is to be calculated;

    c. If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at one hundred thousand dollars, two hundred fifty thousand dollars, and five hundred thousand dollars;

    d. The date or circumstances under which the private transfer fee obligation expires, if any;

    e. The purpose for which the funds from the private transfer fee obligation will be used;

    f. The name of the person to which funds are to be paid and specific contact information regarding where the funds are to be sent;

    g. The acknowledged signature of the payee; and

    h. The legal description of the real property burdened by the private transfer fee obligation.

2. The person to which the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but the amendment must contain the recording information of the notice of transfer

fee which it amends and the legal description of the property burdened by the private transfer fee obligation.

3. If the payee fails to comply fully with subsection 1, the grantor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.

4. If the payee fails to provide a written statement of the transfer fee payable within thirty days of the date of a written request for the same sent to the address shown in the notice of transfer fee, then the grantor, on recording of the affidavit required under subsection 5, may convey any interest in the real property to any grantee without payment of the transfer fee and is not subject to any further obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.

5. An affidavit stating the facts enumerated under subsection 6 must be recorded in the office of the county recorder in the county in which the real property is situated before or simultaneously with a conveyance under subsection 4 of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection must state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and must include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of such real property at the time of the signing of the affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

6. When recorded, an affidavit as described in subsection 5 constitutes prima facie evidence that:

   a. A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

   b. The person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 342

HOUSE BILL NO. 1421

(Representatives R. Kelsch, Porter)
(Senator Cook)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to good funds for real estate transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 47 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Closing agent" means a person that closes a real estate transaction in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender.

2. "Escrow account" means:

   a. A checking account established by a closing agent with a bank, savings and loan association, credit union, or savings bank that is chartered under the laws of a state or the United States and which is used exclusively for the deposit and disbursement of funds for a real estate transaction; or

   b. A trust account maintained by an attorney under the North Dakota Rules of Professional Conduct.

3. "Good funds" means funds in any one or more of the following forms:

   a. United States currency.

   b. Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.

   c. A check that has been presented for payment and for which payment has been received. As used in this subdivision, the term check includes a certified check and a cashier's check.

   d. A check not to exceed three thousand dollars which is drawn on the trust account of a real estate broker licensed under chapter 43-23 or on the trust account maintained by an attorney under the North Dakota Rules of Professional Conduct, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the trust account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.

e. A cashier's check not to exceed ten thousand dollars in the aggregate that is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States.

f. A check drawn on the escrow account of another closing agent, if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction.

4. "Real estate transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition in connection with the purchase, sale, or financing of an interest in real estate; or a settlement or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a loan financing if the only parties to the loan transaction are the lender and the borrower, and the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

Real estate transaction disbursements.

A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds that are received from any single party to the real estate transaction which in the aggregate are at least ten thousand dollars are good funds.

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