

LIENS

CHAPTER 256

S. B. No. 134
(Reichert, Longmire)

EXPIRATION AND EXTENSION OF MORTGAGES

AN ACT

Providing for expiration of mortgages of real estate ten years after final maturity, or recording in case maturity is not shown of record, unless extended of record hereunder, giving notice and fixing the time of taking effect, repealing sections 28-01-43 and 35-03-13 of the North Dakota Century Code, and creating and enacting subsection 3 of section 28-01-15 of the North Dakota Century Code, relating to time to commence actions or proceedings to foreclose real estate mortgages.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Expiration of Real Estate Mortgages.)** Unless extended as specified in this Act, the lien created by a mortgage of North Dakota real estate and all notice from the record thereof shall expire as to all persons and for all purposes as follows:

1. If the final maturity date is ascertainable from the record of the mortgage the lien of the mortgage expires ten years after that date, or
2. 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 register of deeds.

Expiration of a mortgage lien under the provisions of this Act shall be equivalent for all purposes to proper discharge of the mortgage of record, and execution or recordation of a discharge instrument shall not be necessary to terminate a mortgage lien which has so expired. Satisfaction of mortgage in the common form may be recorded at any time.

Expiration of a mortgage lien as provided herein shall occur 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 shall occur notwithstanding any provisions of the Federal Soldiers' and Sailors' Civil Relief Act.

§ 2. Extension of Mortgage—Expiration Delayed.) Expiration of a real estate mortgage lien as herein provided shall not occur if prior to the date such expiration otherwise would become effective:

1. An action or proceeding to foreclose is timely and properly commenced and the summons and complaint in such action are duly filed with the clerk of the court having jurisdiction, and there is duly recorded in the office of the register of deeds a special notice of the pendency of such action, or of the pendency of a proceeding to foreclose by advertisement, or
2. There is duly recorded in the office of the register of deeds the statutory notice of intention to foreclose with proof of service, or
3. 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 register of deeds, or
4. Actual possession of the mortgaged property is taken and held by the owner of the mortgage, or
5. An instrument by or on behalf of an interested party in affidavit form asserting extension and continuation of the mortgage lien is duly recorded in the office of the register of deeds of the county in which the affected mortgaged real estate or some portion thereof is situated, provided that no such instrument shall be effective to postpone expiration of a mortgage lien under this Act for more than ten years beyond the date expiration would have become effective.

§ 3. Act Retroactive — Effective Date.) Notice is hereby given that this Act applied to all mortgages, including those executed or recorded before the effective date of this Act. This Act shall not bar any action, preclude foreclosure or enforcement of any lien or cause any mortgage lien to expire, until January 1, 1964.

§ 4. Repeal.) Sections 28-01-43 and 35-03-13 of the North Dakota Century Code are hereby repealed, effective January 1, 1964.

§ 5.) Effective from and after January 1, 1964, subsection 3 of section 28-01-15 of the North Dakota Century Code is hereby enacted to read as follows:

3. Any action or proceeding for the foreclosure of a mortgage upon real estate.

Approved March 4, 1963.