

Introduced by

Representatives Maragos, Delmore

Senators Laffen, Nelson

1 A BILL for an Act to provide for security interests in rents.

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

3 **SECTION 1.**

4 **Security interest in rents.**

5 1. A document, however denominated, that is enforceable and creates or provides for a  
6 security interest in real property, whether or not it also creates or provides for a  
7 security interest in personal property, creates an assignment of rents arising from the  
8 real property described in the document, unless the document provides otherwise.

9 2. An assignment of rents creates a presently effective security interest in all accrued  
10 and unaccrued rents arising from the real property described in the document creating  
11 the assignment, whether the document is denominated an absolute assignment, an  
12 absolute assignment condition upon default, an assignment as additional security, or  
13 otherwise. The security interest in rents is separate and distinct from any security  
14 interest held by the assignee in the real property.

15 **SECTION 2.**

16 **Cash proceeds - Priority.**

17 1. An assignee's security interest in identifiable cash proceeds is perfected if its security  
18 interest in rents is perfected. An assignee's security interest in identifiable noncash  
19 proceeds is perfected only if the assignee perfects that interest in accordance with  
20 chapter 41-09.

21 2. Except as otherwise provided in subsection 3, priority between an assignee's security  
22 interest in identifiable proceeds and a conflicting interest is governed by the priority  
23 rules in chapter 41-09.

- 1       3. An assignee's perfected security interest in identifiable cash proceeds is subordinate  
2           to a conflicting interest that is perfected by control under chapter 41-09 but has priority  
3           over a conflicting interest that is perfected other than by control.

4       **SECTION 3.**

5       **Perfection of security interest in rents.**

- 6       1. A document creating an assignment of rents may be submitted for recording in the  
7           office of the recorder for the county in which the real property described in the  
8           document is located in the same manner as any other document evidencing a  
9           conveyance of an interest in real property.
- 10      2. Upon recording, the security interest in rents created by an assignment of rents is fully  
11           perfected, notwithstanding any provision of the document creating the assignment or  
12           other law of this state which would preclude or defer enforcement of the security  
13           interest until the occurrence of a subsequent event, including a subsequent default of  
14           the assignor, the assignee's obtaining possession of the real property, or the  
15           appointment of a receiver.
- 16      3. Except as otherwise provided in subsection 4, a perfected security interest in rents  
17           takes priority over the rights of a person who, after the security interest is perfected,  
18           acquires an interest in or judgment lien against the rents or the real property from  
19           which they arise.
- 20      4. A perfected security interest in rents has priority over the rights of a person listed in  
21           subsection 3 with respect to future advances to the same extent as the assignee's  
22           security interest in the real property has priority over the rights of that person with  
23           respect to future advances.

24      **SECTION 4.**

25      **Enforcement of security interest in rents.**

- 26      1. An assignee may enforce an assignment of rents using any method sufficient to  
27           enforce the assignment under law of this state, including notice to the assignor, notice  
28           to the tenant, and the appointment of a receiver.
- 29      2. From the date of enforcement, the assignee or, in the case of enforcement by  
30           appointment of a receiver, the receiver is entitled to collect all rents that have accrued  
31           but remain unpaid on that date and accrue on or after that date, as those rents accrue.

1       **SECTION 5.**

2       **Application to existing relationships.**

- 3       1. Except as otherwise provided in this section, this Act governs the enforcement of an  
4           assignment of rents and the perfection and priority of a security interest in rents, even  
5           if the document creating the assignment was signed and delivered before August 1,  
6           2013.
- 7       2. This Act does not affect an action or proceeding commenced before August 1, 2013.
- 8       3. This Act does not affect:
- 9           a. The enforceability of an assignee's security interest in rents or proceeds if  
10           immediately before August 1, 2013, that security interest was enforceable;
- 11          b. The perfection of an assignee's security interest in rents or proceeds if  
12           immediately before August 1, 2013, that security interest was perfected; or
- 13          c. The priority of an assignee's security interest in rents or proceeds with respect to  
14           the interest of another person if immediately before August 1, 2013, the interest  
15           of the other person was enforceable and perfected, and that priority was  
16           established.