

## **CHAPTER 28-20 JUDGMENTS**

**28-20-01. Judgment entered by clerk on order.** Superseded by N.D.R.Civ.P., Rule 58.

**28-20-02. Notice of entry of judgment served.** Superseded by N.D.R.Civ.P., Rule 77.

**28-20-03. Rules for rendition of judgment.** Superseded by N.D.R.Civ.P., Rules 20, 41, 54.

**28-20-04. Relief limited by complaint.** Superseded by N.D.R.Civ.P., Rule 54.

**28-20-05. Death before judgment.** Superseded by N.D.R.Civ.P., Rule 54.

**28-20-06. Judgments - Collection from property of decedent.** If judgment has been rendered against a person who thereafter dies:

1. The judgment may be enforced by execution against any real property of the decedent upon which it had become a lien prior to the decedent's death, but no such execution may issue until after the expiration of one year from the death of the judgment debtor;
2. If execution was actually levied prior to the decedent's death upon personal property, such property may be sold to satisfy the execution, and the officer making the sale shall account to the personal representative for any surplus remaining in the officer's hands;
3. If the judgment is for the recovery of real or personal property or for the enforcement of a lien thereon, execution may issue for the enforcement of such judgment; and
4. If the judgment is for the recovery of money, it may be presented as any other claim against the estate of the decedent.

**28-20-07. Judgment in action to recover personalty.** In an action to recover the possession of personal property, the judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof in case a delivery cannot be had and for damages for the taking and detention thereof. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return cannot be had and for damages for the taking and detention thereof.

**28-20-08. Judgment may order delivery of possession - Enforcement.** Every judgment that contains a direction for the sale of specific real property also may direct the delivery of the possession of the property to the purchaser, and the officer receiving the execution or order of sale may enforce the judgment by putting the purchaser in possession of the premises as if special execution had been directed to the purchaser for that purpose. The judgment creditor must show that the debtor has an interest in the real property that is the subject of the judgment.

**28-20-09. Transfer of title or discharge of encumbrance by court.** Superseded by N.D.R.Civ.P., Rule 70.

**28-20-10. Judgment book.** Repealed by S.L. 1985, ch. 337, § 25.

**28-20-11. How judgment entered - Notice when entered.** The judgment must specify clearly the relief granted or other determination of the action. An entry of the judgment must be made by the clerk in the register of civil actions. The entry of any judgment affecting the title or possession of real property, except judgments required to be docketed under the provisions of

section 28-20-13, is not notice of its contents or constructive notice of such judgment to a subsequent bona fide purchaser or encumbrancer, nor to a privy of any party to such judgment who is otherwise a subsequent purchaser or encumbrancer in good faith, and for a valuable consideration, until a certified copy of such judgment is recorded in the office of the recorder in the county in which such property is located.

**28-20-12. Judgment roll - Contents.** Unless the party or the party's attorney furnishes a judgment roll, the clerk, immediately after entering the judgment, shall attach together and file the following papers, which constitute the judgment roll unless otherwise directed by rule of the supreme court:

1. In cases when the complaint is not answered by any defendant, the summons and complaint or copies thereof, the affidavit for service of summons by publication, if any, proof of service and proof that no answer has been received, the report, if any, and a copy of the judgment;
2. In all other cases, the summons, pleadings, or copies thereof, the verdict or decision, the report, if any, the offer of the defendant, a copy of the judgment, the statement of the case, if any, and all orders and papers in any way involving the merits and necessarily affecting the judgment; and
3. All instructions of the court to the jury, when filed with the clerk, the motion and notice of motion for a new trial, the specifications of errors of law and of insufficiency of the evidence, the order of the court granting or denying a new trial, together with the memorandum of the judge's reasons, and the notice of appeal and undertaking thereon.

**28-20-13. Docketing judgment - Transcript to other counties - Lien on real property.** On filing a judgment roll upon a judgment that directs the payment of money, the clerk of the district court in which the judgment was rendered shall docket the judgment in a separate record to be known as the "judgment docket". The judgment may be docketed in any other county upon filing with the clerk of the district court of that county a transcript of the original judgment docket. The judgment is a lien on all the real property, except the homestead, of every person against whom the judgment is rendered, which the person may have in any county in which the judgment is docketed at the time of docketing or which the person thereafter acquires in the county, for ten years from the time of docketing the judgment in the county in which it was rendered. When a judgment is docketed in a county to which unorganized territory is attached for judicial purposes, the judgment is a lien upon any real property of the judgment debtor situated in the unorganized territory to the same extent as though the real property were situated in the organized county. If the unorganized territory thereafter is organized as a county, a transcript of the judgment docket must be filed in the office of the clerk of the district court of the county within ninety days after the organization of the county, or it ceases to be a lien upon any real property in the county.

**28-20-14. Release of judgment lien on appeal.** Whenever an appeal from any judgment is pending and the undertaking requisite to stay execution on such judgment has been given and the appeal perfected as provided in this title, the court in which such judgment was recovered, on motion after notice to the person owning the judgment, may direct the clerk to make an entry on the judgment docket that the judgment is secured on appeal, and thereupon it, during the pendency of the appeal, ceases to be a lien on the real property of the judgment debtor as against purchasers and mortgagees in good faith and for value.

**28-20-15. Affidavit of identification required before filing of judgments.** No judgment for the recovery of money against any person may be docketed or entered until the judgment creditor, or the judgment creditor's agent or attorney, has filed with the clerk of the district court an affidavit stating the full name, occupation, place of residence, and post-office address of the judgment debtor, to the best of the affiant's information and belief, and if the debtor has a known street address, or residence number, or both, it must be given. This section does not apply to any case in which judgment is taken against a corporation, limited liability

company, copartnership, public official, or party sued in a representative capacity. Failure to file such affidavit, or the filing of a defective or insufficient affidavit, does not invalidate the judgment docketed or entered, but the clerk of the district court entering or docketing a judgment without such affidavit of identification is liable to any person damaged thereby in the sum of five dollars.

**28-20-16. How judgment docketed.** Unless otherwise directed by rules of the supreme court, the clerk shall docket the judgment by entering alphabetically in the judgment docket the names of the judgment debtors, the names of the parties in whose favor the judgment was rendered, the sum recovered or directed to be paid in figures, the date of the judgment, the exact time to the minute when the judgment roll or transcript was filed, the exact time to the minute when the judgment was docketed in the clerk's office, the name of the court in which the judgment was rendered, and the name of the attorneys for the party recovering the judgment. If there are two or more judgment debtors, the entries must be repeated under the initial letter of each surname.

**28-20-17. Duties of clerks on filing transcript.** Upon the filing of a transcript of judgment in the office of any clerk of a district court, the clerk with whom such transcript is filed forthwith shall notify by mail the clerk issuing the same of the time when such judgment was docketed in the county in which such transcript is filed, and a memorandum showing the time of such docketing must be entered by the clerk who issued the transcript, upon that clerk's judgment docket.

**28-20-18. Docketing judgments of United States courts - Effect.** Repealed by S.L. 1969, ch. 294, § 10.

**28-20-19. Docketing of county court judgments - Effect.** Repealed by S.L. 1985, ch. 337, § 25.

**28-20-20. Assignment of judgment to be entered upon the judgment docket.** Every clerk of the district court, upon the presentation of an assignment of any judgment rendered or docketed in the court, signed by the party in whose favor the judgment is rendered, or by the party's executor or administrator, and acknowledged in the manner prescribed by law for the acknowledgment of deeds, shall note the fact of the assignment, the date thereof, and the name of the assignee upon the docket of the judgment. No filing fee may be charged or collected by the clerk of district court for entering an assignment of a judgment. The clerk of the district court of any other county where the judgment is docketed shall note the fact of the assignment, the date thereof, and the name of the assignee, upon the presentation and filing with that clerk of a certified copy of the original judgment docket with the facts of the assignment noted thereon.

**28-20-21. Renewal of judgments by affidavit.** Any judgment which in whole or in part directs the payment of money and which may be docketed in the office of the clerk of any district court in this state may be renewed by the affidavit of the judgment creditor or of the judgment creditor's personal representative, agent, attorney, or assignee at any time within ninety days preceding the expiration of ten years from the first docketing of such judgment. The affidavit must be entitled as in the original judgment and must set forth:

1. The names of the parties plaintiff and defendant;
2. The name of the court in which docketed;
3. The date and amount of the original judgment;
4. The file number of the case in the county in which the judgment was originally entered;
5. The name of the owner of said judgment, and, if not the party in whose name the judgment was entered, the source of that person's title thereto and a statement of each assignment of said judgment necessary to trace the title thereof from the original judgment creditor;

6. If the judgment was entered upon a certified transcript from any other court, a statement of this fact;
7. A statement of each county in which a transcript of said judgment has been filed;
8. A statement that no execution is outstanding and unreturned upon said judgment, or, if any execution is outstanding, that fact must be stated;
9. The date and amount of each payment upon said judgment, whether collected under execution or otherwise, and that all payments have been duly credited upon said judgment, and whether any amount has been realized that has not been credited upon the judgment and upon the records in the court in which the judgment was originally rendered, or in any other court to which it has been transcribed;
10. That there are no offsets or counterclaims against the person for whose benefit the renewal is sought and in favor of the judgment debtor or debtors, or, if a counterclaim or offset does exist in favor of the judgment debtor, a statement of the amount, if ascertained or certain, and an offer to allow the same as a credit pro tanto upon the amount due from the judgment debtor, or, if the counterclaim or offset is unsettled or undetermined, an offer that when the same is settled or determined, by suit or otherwise, the same may be allowed as a payment or credit upon said judgment to the full amount which subsequently may be adjudged due the judgment debtor thereon;
11. The exact amount due upon said judgment, after allowing all offsets and counterclaims known to the affiant; and
12. Any other facts or circumstances necessary to a complete disclosure as to the exact condition of said judgment.

The affidavit must be verified positively by the person making it and not on information and belief.

**28-20-22. Affidavit of renewal - Where filed - Entry.** If the judgment was rendered in a court of this state, the affidavit for renewal must be filed with the clerk of court where the judgment was first docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any court where the same has been docketed and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed as requested by the judgment creditor. The clerk of court shall immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed.

**28-20-23. Lien extended for ten years by renewal.** The entry and docketing of an affidavit of renewal of a judgment operates to continue the lien of the judgment to the extent of the balance due on said judgment as shown by the affidavit on all real property, except the homestead, of the judgment debtor or debtors in the county where the same is docketed which the judgment debtor or debtors may have at the time of such docketing or may acquire subsequently in such county, for a period of ten years from the time of the docketing of such affidavit. The filing of a certified copy of such affidavit of renewal and the docket entries thereon in a county wherein a transcript of the original judgment was docketed likewise continues and extends the lien of said judgment in such county. An execution may issue upon said judgment as renewed under the same conditions and with the same force and effect within such renewal period as upon a judgment originally rendered and entered at the date of such renewal, and all other remedies for the enforcement of judgments apply to the enforcement of such renewed judgment.

**28-20-24. Satisfaction of judgment.** Any judgment rendered or docketed in any district court of this state may be canceled and discharged by the clerk thereof, upon the filing with the clerk of an acknowledgment of the satisfaction thereof signed by the party in whose favor the

judgment was obtained, or by that party's attorney of record, executor or administrator, or assignee, and duly acknowledged in the manner required to admit a deed of real property to record.

**28-20-25. Discharge of record.** Upon the return of an execution issued upon a judgment that has been satisfied, or the presentation of a satisfaction duly executed, to the clerk of any district court, the clerk shall immediately note upon the judgment docket the date and manner of the cancellation.

**28-20-26. Partial satisfaction.** A partial satisfaction of a judgment may be made and noted upon the records in like manner as a full satisfaction, and thereupon the judgment and all liens thereby created must be taken and deemed to be canceled and discharged to the extent of the entries so made upon the judgment docket.

**28-20-27. Cancellation of judgment transcribed to other counties.** Upon the cancellation and discharge of any judgment by the clerk of the district court of the county wherein the judgment was rendered or docketed, such clerk immediately shall forward to the clerk of the district court of any other county wherein a transcript of such judgment docket has been filed and the judgment docketed accordingly, a written notice under the clerk's hand and seal, showing the names of the parties, the date and amount of such judgment, and the fact that such judgment has been canceled and discharged. Upon receipt of such notice by any clerk of court wherein such judgment is of record, such officer immediately shall cancel and discharge such judgment of record. No additional charge may be made for issuing said notice nor for canceling and discharging such judgment in the counties to which transcribed.

**28-20-28. Satisfaction of judgment when creditor cannot be found or satisfaction is refused.** Superseded by N.D.R.Ct. 7.1.

**28-20-29. Satisfaction of judgment pending appeal by judgment creditor.** Any judgment debtor upon a money judgment duly docketed in the district court from which judgment an appeal has been perfected to the supreme court by the judgment creditor may cause such judgment to be released as a lien against the real property of said judgment debtor by depositing with the clerk of the district court in which said judgment was entered originally a sum of money equal to one and one-third times the amount of said judgment with interest and costs, and upon such deposit the clerk shall satisfy and discharge the said judgment as a lien against the real property of said judgment debtor. In lieu of depositing the money as aforesaid, the judgment debtor may file with the clerk of the district court a good and sufficient bond executed as provided by law for the execution of a bail bond conditioned for the payment of such judgment upon its final determination in the appellate court, or at any time upon the dismissal of the appeal. Such bond must be approved by the judge of the district court.

**28-20-30. Cancellation of judgment against bankrupts - Procedure.** Repealed by S.L. 2007, ch. 275, § 3.

**28-20-30.1. Effect of bankruptcy on judgment lien.**

1. If a judgment lien appears on a judgment debtor's real property and the debtor is later the subject of bankruptcy proceedings in which the judgment lien is avoided or set aside, the judgment lien may be terminated of record by filing a certified copy of the bankruptcy court lien avoidance judgment.
2. A prebankruptcy petition judgment does not create a lien on real property that is acquired by the judgment debtor after the filing of the bankruptcy petition which may be established by filing a copy of the discharge.
3. A copy of the discharge may be filed to remove a judgment lien as a cloud on the homestead set aside to the bankruptcy debtor.

4. Subsection 2 does not apply if the judgment creditor files a certified copy of an order or a judgment of the bankruptcy court which declares the debt is nondischargeable. A judgment creditor may record lis pendens stating the judgment creditor has filed a nondischargability action in bankruptcy court. This section does not apply to debts automatically excepted from discharge under section 523 of the United States Bankruptcy Code [11 U.S.C. 523].
5. As used in this section, "files" or "filing" means a filing with the clerk of district court in the county in which the judgment is docketed or transcribed.

**28-20-31. Certificate of clerk of bankruptcy court to be prima facie evidence of service.** Repealed by S.L. 2007, ch. 275, § 3.

**28-20-32. Affidavit of applicant to be served with notice of motion.** Repealed by S.L. 2007, ch. 275, § 3.

**28-20-33. Mutual judgments set off.** Mutual final judgments may be set off pro tanto, the one against the other, by the court, upon proper application and notice.

**28-20-34. Interest rate on judgments.** Interest is payable on judgments entered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum through December 31, 2005. Beginning January 1, 2006, the interest is payable at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded in any manner or form. On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest on all judgments entered in the courts of this state before January 1, 2006, must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or form. Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid.

**28-20-35. Cancellation of judgment of record.** After ten years after the entry of a judgment that has not been renewed, or after twenty years after the entry of a judgment that has been renewed, the judgment must be canceled of record.

**28-20-36. Application of partial payments on judgments.** A partial payment made on a judgment must be applied first to postjudgment costs. If the payment exceeds the costs, the excess amount must be applied toward satisfying the interest due. If the payment exceeds the costs and interest, the excess amount must be applied toward discharging the judgment amount, and the subsequent interest is to be computed on the balance of the judgment amount remaining due. If the payment falls short of satisfying the costs and interest, interest continues to accrue on the former judgment amount until a payment is made that exceeds the sum of the costs and interest due at the time of payment, and then the excess amount must be applied toward discharging the judgment amount, and interest accrues thereafter on the balance of the judgment amount remaining due. This section does not apply to the collection of any debt owed to the state or a political subdivision.