

TITLE 28
JUDICIAL PROCEDURE, CIVIL

CHAPTER 28-01
TIME FOR COMMENCING ACTIONS

28-01-01. Actions relating to real estate brought by state of North Dakota - Limitations.

The state of North Dakota will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same, unless:

1. Such right or title has accrued within forty years before any action or other proceeding for the same shall be commenced; or
2. The state or those from whom it claims have received the rents and profits of such real property or of some part thereof within the space of forty years.

28-01-02. Actions relating to real estate brought by person claiming through grant from state - Limitations.

No action may be brought for or in respect to real property by any person claiming by virtue of a grant from this state, unless the same might have been commenced by this state as herein specified in case such grant had not been issued or made.

28-01-03. Actions relating to real estate when state grant judicially declared void - Limitations.

When a grant of real property has been issued or made by this state and the same is declared void by the final judgment of a court of competent jurisdiction, an action for the recovery of the premises so conveyed may be brought either by this state or by any subsequent grantee of the premises, or the subsequent grantee's heirs or assigns, within twenty years after the date on which such judgment was rendered, but not after that period.

28-01-04. Actions for recovery or possession of real property - Limitations.

No action for the recovery of real property or for the possession thereof may be maintained, unless the plaintiff, or the plaintiff's ancestor, predecessor, or grantor, was seized or possessed of the premises in question within twenty years before the commencement of such action.

28-01-05. Actions founded upon title to real estate or to rents or services therefrom - Limitations.

No claim for relief, or defense, or counterclaim to an action founded upon the title to real property, or to rents or service out of the same, is effectual unless it appears that the person prosecuting the action or interposing the defense or counterclaim, or under whose title the action is prosecuted or the defense or counterclaim is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within twenty years before the committing of the act in respect to which such action is prosecuted or such defense or counterclaim is made.

28-01-06. Actions founded upon entry upon real estate - Limitations.

No entry upon real estate may be deemed sufficient or valid as a claim unless an action is commenced thereon within one year after the making of such entry and within twenty years from the time when the right to make such entry descended or accrued.

28-01-07. Presumption against adverse possession of real estate.

In every action for the recovery of real property or for the possession thereof, the person establishing a legal title to the premises must be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by any other person must be deemed to have been under and in subordination to the legal title, unless it appears that

such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

28-01-08. Adverse possession when based upon written instrument.

Whenever it appears that the occupant, or those under whom the occupant claims, entered into the possession of premises under a claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises, under such claim for twenty years, the premises so included must be deemed to have been held adversely.

28-01-09. Acts constituting adverse possession based upon a written instrument.

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or upon a judgment or decree, land must be deemed to have been so possessed and occupied in each of the following cases:

1. When it has been usually cultivated or improved;
2. When it has been protected by a substantial enclosure;
3. When, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purposes of husbandry, or the ordinary use of the occupant; or
4. When a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, must be deemed to have been occupied for the same length of time as the part improved and cultivated, but when the premises consist of two or more contiguous lots, the possession of one lot may not be deemed a possession of any other of such lots.

28-01-10. Extent of real estate affected by adverse possession not based on written instrument.

When there has been an actual continued occupation of premises under a claim of title exclusive of any other right, but not founded upon a written instrument or upon a judgment or decree, the premises actually occupied and no other must be deemed to have been held adversely.

28-01-11. Acts constituting adverse possession not based upon a written instrument.

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument nor upon a judgment or decree, land shall be deemed to have been possessed and occupied only in the following cases:

1. When it has been protected by a substantial enclosure; or
2. When it has been usually cultivated or improved.

28-01-12. When possession of tenant presumed to be possession of landlord.

Whenever the relation of landlord and tenant has existed, the possession of the tenant must be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy, or, when there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to the tenant's landlord. Such presumptions may not be made after the periods herein limited.

28-01-13. Possession not affected by descent.

The right of a person to the possession of any real property is not impaired nor affected by a descent being cast in consequence of the death of a person in possession of such property.

28-01-14. Disabilities extend limitations on actions affecting real estate.

If a person who is entitled to maintain any of the actions affecting real estate mentioned in this chapter, or entitled to interpose a defense or counterclaim to such an action, or entitled to make an entry upon real property is:

1. Under the age of eighteen years;
2. Insane; or
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life,

at the time the person's title first descends or the person's claim for relief or right of entry first accrues, or when such defense or counterclaim might be interposed, the time of such disability is not a part of the time in this chapter limited for the commencement of such action, or the making of such entry, or the interposing of such defense or counterclaim. However, the time so limited cannot be extended more than ten years after the disability ceases or after the death of the person so disabled.

28-01-15. Actions having ten-year limitations.

The following actions must be commenced within ten years after the claim for relief has accrued:

1. An action upon a judgment or decree of any court of the United States or of any state or territory within the United States;
2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor; and
3. Any action or proceeding for the foreclosure of a mortgage upon real estate.

28-01-16. Actions having six-year limitations.

The following actions must be commenced within six years after the claim for relief has accrued:

1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of sections 28-01-15 and 41-02-104.
2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
3. An action for trespass upon real property.
4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided.
6. An action for relief on the ground of fraud in all cases both at law and in equity, the claim for relief in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

28-01-17. Actions having three-year limitations - Exceptions.

The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff or coroner upon a liability incurred by the doing of an act in the sheriff's or coroner's official capacity and by virtue of that office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a construction lien.

28-01-18. Actions having two-year limitations.

The following actions must be commenced within two years after the claim for relief has accrued:

1. An action for libel, slander, assault, battery, or false imprisonment.
2. An action upon a statute for a forfeiture or penalty to the state.
3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation is subject to the provisions of section 28-01-25.
4. An action for injuries done to the person of another, when death ensues from such injuries, and the claim for relief must be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.
5. An action for recovery of damages arising under chapter 5-01, and the claim for relief is deemed to have accrued at the time of the alleged offense. This limitation does not apply to any claim for relief existing at the time of the enactment of this subsection.

28-01-19. Actions having one-year limitations.

An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process must be commenced within one year after the claim for relief has accrued.

28-01-20. Limitations on actions for forfeitures brought by persons or state.

An action upon a statute for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same must be commenced within one year after the commission of the offense and if the action is not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the state by the attorney general, or by the state's attorney of the county where the offense was committed.

28-01-21. Limitations on actions founded on right of homestead.

No action, defense, or counterclaim founded upon a right of homestead in property conveyed or encumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or encumbrance, and for which no declaration of homestead has been filed previous to the execution of such conveyance or encumbrance, is effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed, within two years after the execution of such conveyance or encumbrance. Such limitation does not apply if the homestead claimant, at the time of the execution of such conveyance or encumbrance, was in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action, or the interposing of such defense or counterclaim.

28-01-22. Limitations on actions not specifically provided for.

An action for relief not otherwise provided for must be commenced within ten years after the claim for relief has accrued.

28-01-22.1. Actions against state - Limitation.

When not otherwise specifically provided by law, an action against the state or its employees and officials acting within the scope of their employment or office must be commenced within three years after the claim for relief has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have

been discovered in the exercise of reasonable diligence. This may not be construed as a waiver of immunity.

28-01-23. Limitations in chapter applicable to state.

The limitations prescribed in this chapter apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties.

28-01-24. Limitations on claims for relief fraudulently concealed.

When, by fraud or fraudulent concealment, a party against whom a claim for relief exists prevents the person in whose favor such claim for relief exists from obtaining knowledge thereof, the latter may commence an action within one year from the time the claim for relief is discovered by the latter or might have been discovered by the latter in the exercise of diligence. Such fraud or fraudulent concealment must be established to the satisfaction of the court or jury, as the case may be, by a fair preponderance of the evidence.

28-01-25. Disabilities extend limitations on actions generally - Exceptions.

If a person who is entitled to bring an action other than for the recovery of real property, or for a penalty or forfeiture, or against a sheriff or other officer for an escape is:

1. Under the age of eighteen years;
2. Insane; or
3. Imprisoned on a criminal charge or in execution under the sentence of a criminal court for a term less than for life,

at the time the claim for relief accrues, the time of such disability is not a part of the time limited for the commencement of the action. However, the period within which the action must be brought cannot be extended more than five years by any such disability except infancy, nor can it be extended in any case longer than one year after the disability ceases. In cases alleging professional malpractice, the extension of the limitation due to infancy is limited to twelve years.

28-01-25.1. Limitation on actions alleging childhood sexual abuse.

Notwithstanding section 28-01-25, a claim for relief resulting from childhood sexual abuse must be commenced within seven years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse. For purposes of this section, "childhood sexual abuse" means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age and which would have been a violation of chapter 12.1-20 or 12.1-27.2.

28-01-26. Limitation in case of death.

If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the claim for relief survives, an action may be commenced by that person's representatives after the expiration of that time and within one year from that person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the claim for relief survives and is not one based upon a claim which may be filed proceeding under title 30.1, an action may be commenced against that person's personal representative after the expiration of that time and within one year after the issuing of letters.

28-01-26.1. Survival of claims for relief.

No action or claim for relief, except for breach of promise, alienation of affections, libel, and slander, abates by the death of a party or of a person who might have been a party had such death not occurred.

28-01-27. Limitation in case of war.

When a person is a subject or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of any action.

28-01-28. Limitation when judgment reversed.

If an action is commenced within the time prescribed therefor and the judgment therein is reversed on appeal, the plaintiff, or, if the plaintiff dies and the claim for relief survives, the plaintiff's heirs or representatives, may commence a new action within one year after the reversal.

28-01-29. Limitation when commencement of action stayed.

When the commencement of an action is stayed by injunction or other order of a court, or by a statutory prohibition, the time of the continuance of the stay is not a part of the time limited for the commencement of the action.

28-01-30. When limitation for disability available.

One may not avail oneself of a disability, unless it existed when that person's claim for relief accrued.

28-01-31. Limitation for coexisting disabilities.

When two or more disabilities coexist at the time the claim for relief accrues, the limitation does not attach until they are all removed.

28-01-32. Absence from state tolls limitations - Exception.

If any person is out of this state at the time a claim for relief accrues against that person, an action on such claim for relief may be commenced in this state at any time within the term limited in this chapter for the bringing of an action on such claim for relief after the return of such person into this state. If any person departs from and resides out of this state and remains continuously absent therefrom for the space of one year or more after a claim for relief has accrued against that person, the time of that person's absence may not be taken as any part of the time limited for the commencement of an action on such claim for relief. The provisions of this section, however, do not apply to the foreclosure of real estate mortgages by action or otherwise and do not apply if this state's courts have jurisdiction over a person during the person's absence.

28-01-33. Actions against directors or stockholders of moneyed corporations or banking associations for statutory penalties or forfeiture - Limitation.

This chapter does not affect actions against directors or stockholders of a moneyed corporation or banking association to recover a penalty or forfeiture imposed, or to enforce a liability created, by law, but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created.

28-01-34. Actions upon judgments rendered in courts of state not maintainable without leave of court.

No action may be commenced upon a judgment rendered in any court of this state between the same parties within nine years after its rendition, without leave of the court granted for good cause shown and upon notice to the adverse party.

28-01-35. Bank notes.

This chapter does not affect actions to enforce the payment of bills, notes, or other evidence of debt, issued by moneyed corporations, or issued or put in circulation as money.

28-01-36. New promise must be in writing in order to extend limitation - Effect of any payment.

No acknowledgment or promise is sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby, but this section does not alter the effect of any payment of principal or interest.

28-01-37. When claim for relief upon open account accrues.

In an action brought to recover a balance due upon a mutual open, and current account, when there have been reciprocal demands between the parties, the claim for relief is deemed to have accrued from the time of the last item proved in the account on either side.

28-01-38. When action deemed commenced.

An action is commenced as to each defendant when the summons is served on that defendant, or on a codefendant who is a joint contractor or otherwise united in interest with that defendant. An attempt to commence an action is equivalent to the commencement thereof within the meaning of this chapter when the summons, with the intent that it shall be actually served, is delivered:

1. To the sheriff or other officer of the county in which the defendants or one of them usually or last resided; or
2. To the sheriff or other officer, if a corporation is defendant, of the county in which was situated the principal place of business of such corporation, or in which its general business was transacted, or in which it kept an office for the transaction of business.

Such an attempt must be followed within sixty days by the first publication of the summons or the service thereof.

28-01-39. Defense of limitations to be taken by answer.

The objection that an action was not commenced within the time limited by law can only be taken by answer.

28-01-40. Reports of loss through pesticide application required.

Repealed by S.L. 1985, ch. 103, § 10.

28-01-41. Contents of verified reports of damage.

Repealed by S.L. 1985, ch. 103, § 10.

28-01-42. Cancellation or enforcement of contract for sale of real estate - Limitation - When time begins to run - Commencement of proceedings.

No action or proceeding may be maintained by a person out of possession to cancel or enforce any contract for the sale or conveyance of real estate, after twenty years from the date of said contract, as shown by the record of such instrument, or after twenty years from the date of recording of any instrument which describes or refers to such contract, which itself is not of record, unless the record of such contract or other instrument shows that less than ten years have elapsed since the due date of the last payment on the indebtedness or part thereof, secured thereby, or since the claim for relief has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension has not yet expired. The limitation of this section may not be extended by the nonresidence of any plaintiff or defendant or of any vendor or vendee, nor by reason of any payment made after the due date of the last payment on the indebtedness or part thereof, nor by reason of any disability of any party interested in the contract.

28-01-43. Foreclosure of real estate mortgage - Limitation - When time begins to run - Commencement of proceedings.

Repealed by S.L. 1963, ch. 256, § 4.

28-01-44. Limitation of action - Person submitting plans for improvements to real estate.

1. No action, whether in contract, oral or written, in tort or otherwise, to recover damages:
 - a. For any deficiency in the design, planning, supervision, or observation of construction or construction of an improvement to real property;
 - b. For injury to property, real or personal, arising out of any such deficiency; or

- c. For injury to the person or for wrongful death arising out of any such deficiency, may be brought against any person performing or furnishing the design, planning, supervision, or observation of construction, or construction of such an improvement more than ten years after substantial completion of such an improvement.
2. Notwithstanding the provisions of subsection 1, in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the tenth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within two years after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than twelve years after the substantial completion of construction of such an improvement.

Nothing in this section may be construed as extending the period prescribed by the laws of this state for the bringing of any action.

3. The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant, or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.
4. As used in this section, the term "person" means an individual, corporation, partnership, business trust, unincorporated organization, association, or joint stock company.

28-01-45. Limitation of action against abstracter.

An action founded upon an error or omission in an abstract may be commenced against an abstracter at any time within twenty years after the date of the certificate of the abstract.

28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases.

Any action for injury or death alleging professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living facility licensed by this state or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, must be dismissed without prejudice on motion unless the plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action. The court may set a later date for serving the affidavit for good cause shown by the plaintiff if the plaintiff's request for an extension of time is made before the expiration of the three-month period following commencement of the action. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion. This section does not apply to unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

28-01-46.1. Waiver of privilege for health care providers and informal discussion.

A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, as defined in section 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity, waives in that action any privilege existing under rule 503 of the North Dakota Rules of Evidence, as to any medical records, opinions, or other information in the possession of any other health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. The waiver must permit all defendants to the action, and their attorneys or authorized representatives, to examine the medical records, opinions, or other information and informally participate in a discussion with the health care provider, if the provider consents, regarding the medical records, opinions, or other information that appear reasonably calculated to lead to the discovery of admissible evidence as to any element of the action or the defense of the action. Any statements made by a health care

provider during an informal discussion are not admissible, directly or by reference in direct or cross-examination of any witness, in any administrative, civil, or criminal proceeding. However, this section does not render inadmissible any statements obtained from the health care provider in discovery or any legal proceedings independent of the informal discussion which are otherwise admissible in the administrative, civil, or criminal proceeding.

The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. This requirement is satisfied if the defendant's attorney serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal discussion stating the time, date, and location of the informal discussion. If the plaintiff's attorney, after consultation with the defendant's attorney, is unable to attend the discussion at the time or on the date specified in the notice or at some other agreed-upon date and time, the court in which the action is pending shall, upon motion of any party before the date specified in the notice, hold a scheduling conference to set a date and time for the informal discussion that will best serve the convenience of the parties and the health care provider and the interests of justice. Appropriate authorizations permitting access to the written medical record, informal discussion, and testimony at a deposition or trial must be provided by the party commencing the action at the time the action is commenced. If the party commencing the action fails to provide appropriate authorizations at the time the action is commenced, the health care provider or health care facility may use other means to obtain the records such as by subpoena or by seeking a court order. If alternative means to obtain a patient's records are used, the court shall award reasonable costs incurred by the health care provider or health care facility in obtaining those records, including reasonable attorney's fees.

28-01-47. Limitation of action for asbestos claims.

1. The legislative assembly finds that it is in the interest of the general public, particularly those persons who may bring claims regarding materials containing asbestos in public buildings and those against whom the claims may be brought, to set a specific date by which public building owners must bring a cause of action for removal or other abatement costs associated with the presence of asbestos in their buildings. By enactment of this statute of limitations, the legislative assembly does not imply that suits would otherwise be barred by an existing limitations period.
2. Notwithstanding any other law to the contrary, any action to recover costs for removal and replacement of asbestos or materials containing asbestos from a public building; to recover costs for other measures taken to locate, correct, or ameliorate any problem related to asbestos in a public building; or for reimbursement for removal and replacement, correction, or amelioration of an asbestos problem in a public building, must be commenced prior to August 1, 1997. Any such action which would otherwise be barred before August 1, 1997, as a result of expiration of the applicable period of limitation, is revived or extended. An asbestos action revived or extended under this subsection must be commenced prior to August 1, 1997.
3. For purposes of this section, "public building" means any building owned by any county, city, township, school district, park district, or any other unit of local government, the state or any agency, industry, institution, board, or department thereof.

28-01-48. Action based on real estate transaction duty - Three-year limitation.

An action for recovery of damages against a person licensed under chapter 43-23 which results from a breach of duty relating to a real estate transaction must be commenced within three years after the claim for relief has accrued.