



1939

## Code Revision

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# BAR BRIEFS

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## STATE BAR ASSOCIATION OF NORTH DAKOTA

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### CODE REVISION

Shortly after the revision statute was adopted, Mr. Clyde Duffy, as president of the State Bar Association, appointed committees from the State Bar to assist in the revision and recodification of various subjects. These various committee members were notified of their assignments by your secretary, M. L. McBride. Recently letters have gone out to the chairman of each of these committees and each member of the Bar will undoubtedly be contacted shortly by the committee chairmen.

The previous issues of Bar Briefs have pointed out the proposed form of the new code. For the consideration of the Bar, the titles tentatively decided on are as follows:

Aeronautics; Agency; Agriculture; Alcoholic Beverages; Banks and Banking; Building and Loan Associations; Carriage; Civil Procedure; Contracts and Contractors; Corporations; Counties; Crimes and Punishment; Criminal Procedure; Domestic Relations and Persons; Education; Elections; Employment; Fences; Fires; Firearms; Foods, Drugs, Oils and Compounds; Fraudulent Conveyance; Game and Fish; Guaranty, Indemnity, and Surety; Health and Safety; Highways, Bridges and Ferries; Historical Data; Insane and Feeble-Minded; Insurance; Judicial Branch of Government; Judicial Proof; Judicial Remedies; Lending and  
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## CODE REVISION

(Continued From Front Page)

Hiring; Liens; Livestock; Militia, Soldiers and Sailors; Mines and Miners; Minors; Motor Vehicles; Municipal Government; Negotiable Instruments; Nuisances; Obligations; Occupations and Professions; Offices and Officers; Partnership; Probate Procedure; Property; Public Buildings and Institutions; Public Utilities; Public Welfare; Recreation, Sports and Amusements; Sales and Exchange; State Government; Succession; Descent; Wills; Taxation; Townships; Trusts, Uses and Powers; Warehousing and Deposit; Waters; Weeds; Weights and Measures; Workmen's Compensation; and General Provisions.

Each of these titles are being logically divided into chapters. Some of these titles may have to be changed during the course of revision. It would be very helpful if the members of the Bar would consider these titles and make any suggestions which they deem pertinent.

## CODE COMMISSION.

By C. L. Young,  
Clyde Duffy,  
A. M. Kuhfeld,  
Commissioners.

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**THE DECLARATORY JUDGMENT**

Alternative Relief — There are two lines of authority upon the question of whether the declaratory judgment is proper as an alternative remedy. One view is that the remedy is proper only when an ordinary remedy is not available. The second and seemingly more reasonable attitude is that declaratory relief can be had whether a remedy at law is to be had or not. Most authorities consider this the majority and better interpretation. Borchard, *Declaratory Judgments*, (1934) p. 151.

As yet, this issue has not been directly raised in any North Dakota court, but on analysis of decided cases involving the declaratory judgment, it appears that North Dakota leans toward the majority view. In agreement to reduce the debt, and subsequent repudiation by the defendant city, plaintiff brought an action for a declaratory judgment which was allowed by the court, although it is plain that the action could have been brought on the contract. *Jones Lumber Co. v. City of Marmarth*, 67 N. D. 309, 272 N. W. 190; (1937). In another case, *State v. Divide County*, where the question of the paramountcy of a state mortgage and county tax liens were in issue, a declaration was allowed. Here, the State could have brought foreclosure proceedings as was done in a similar case cited in the opinion of the court. *State v. Burleigh City*, 55 N. D. 1, 212 N. W. 217; (1927). The court, in ruling that action for declaratory relief was proper, listed the requirements for the use of that remedy as follows: (1) a justiciable controversy between (2) parties whose interests were adverse, (3) the party seeking declaratory relief must have a legal