

**OPINION
66-331**

July 15, 1966 (OPINION)

Mr. Calvin A. Calton

State's Attorney

Divide County

RE: Uniform Commercial Code - Security Agreement - Inclusion

of Attorney Fees

Uniform Commercial Code

This is in reply to your letter of July 12, 1966, relative to the allowance of attorneys fees under the North Dakota Uniform Commercial Code. You note that section 28-26-04 of the North Dakota Century Code was amended and reenacted by the 1965 Legislative Assembly.

Section 28-26-04 of the North Dakota Century Code, as amended, provides:

"ATTORNEY'S FEE IN INSTRUMENT VOID. - Any provision contained in any note, bond, mortgage, security agreement, or other evidence of the debt for the payment of an attorney's fee in case of default in payment or in proceedings had to collect such note, bond, or evidence of debt, or to foreclose such mortgage or security agreement is against public policy and void."

The amendment by the 1965 Legislative Assembly consisted of the addition of the words "security agreement" in the above entitled statute. The term "security agreement" is a term used and defined by the Uniform Commercial Code. See section 41-09-05(h) of the North Dakota Century Code, as amended.

This amendment to include the term "security agreement" in the above quoted statute is, in our estimation, clear evidence of the intent of the legislature that a provision for attorney's fees are void as above indicated, even if the evidence of debt is a security agreement entered into under the provisions of the North Dakota Uniform Commercial Code. Furthermore, we would note that section 28-26-04 was amended by section 10 of chapter 296 of the 1965 Session Laws and therefore the amendment and reenactment of the above statute was actually a part of the same law by which the Uniform Commercial Code was enacted. We believe this is conclusive proof of the intent of the legislative assembly.

It is therefore our opinion that any provision for the payment of an attorney's fee in case of default in payment or in proceedings for collection in any security agreement executed under the provisions of the North Dakota Uniform Commercial Code, as well as any other evidence of debt, is against public policy and void in North Dakota.

HELGI JOHANNESON

Attorney General