

community BANKER

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Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

2017 Legislative Session

Governor Burgum signed 440 bills that came out of the 65th Legislative Assembly and we are still sifting through them. A few that we thought you should know about are summarized below.



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House Bill 1191

Subject: Relating to loans to political subdivisions

Effective Date: August 1, 2017

Summary: HB 1191 amends N.D.C.C. § 21-13-02 to simplify the lending process to a political subdivision. The old statute appeared to require that the loan agreement must be signed by at least four representatives of the political subdivision. The amendment clarifies that loan documents need be signed on behalf of the political subdivision by only *two* representatives – the president or equivalent officer and by the auditor or equivalent officer.

House Bill 2340

Subject: Document font size; blank space at top of documents; filing fees for recording

Effective Date: August 1, 2017

Summary: As of August 1, 2017,

1. In order to be accepted for recording, an instrument affecting title to real estate must be considered “legible” by the recorder and, unless the form was submitted by a government agency, must have a font size equal to or larger than ten point Calibri. N.D.C.C. § 11-18-05(2).
2. There must be a space of at least three inches across the top of the first page of each instrument for the recorder’s recording information. (It used to be four inches.) If a document lacks the three-inch space, it will still be recorded, but the Recorder will add a page and will charge a fee accordingly.
3. The amendment also implements flat fees for filing certain documents, including deeds and mortgages, of \$20 for documents containing up to six pages, and \$65 for documents containing seven to twenty-five pages. A fee of \$3 per page will be charged for each additional page after page 25.
4. County Recorders have the discretion to determine “legibility”; we have remarked in the past that all documents should contain a font no smaller than ten-point, but there was no specific typeface used as a guide. Pursuant to this amendment, please ensure that documents for recording have a font size is equal to or larger than ten point Calibri.

Senate Bill 2214

Subject: Relating to the requirement of a social security number or internal revenue service taxpayer identification number on uniform commercial code and secured transaction records

Effective Date: August 1, 2017

Summary: SB 2214 amends N.D.C.C. § 41-09-87 to make it clear that in the case of filings entered in the secretary of state's online filing system, the debtor's social security number or TIN *must* be included or filing does not occur. In other words, failing to include the social security or TIN number is an *ineffective filing*.

Senate Bill 2276

Subject: Senate Bill 2276 amends N.D.C.C. § 10-33-21 to prohibit nonprofit corporations from using permanently restricted assets as collateral

Effective Date: August 1, 2017

Summary: Among other things, this Bill amends N.D.C.C. § 10-33-21 to specifically prohibit a nonprofit corporation's use of permanently restricted assets as collateral. A nonprofit corporation may pledge, grant a security interest in, or use *temporarily* restricted assets only for purposes in accordance with the donor's restrictions. Lenders, be aware that nonprofit corporations have strict collateral standards.

Senate Bill 2159

Subject: Relating to the management of a limited liability company

Effective Date: July 31, 2015 (applies retroactively to cases arising after this date)

Summary: SB 2159 amends several subsections of N.D.C.C. § 10-32.1-39 of North Dakota's Uniform Limited Liability Company Act. This section relates to the management of an LLC and provides that "member consent" is *not* required for LLC management to grant a lien or a security interest in all or "substantially all" of the company's assets as collateral or to transfer company assets to other wholly

owned organizations. Lenders, keep in mind that even with this provision, an LLC must still have authority to obtain a loan in the first place.

Senate Bill 2212

Subject: Relating to residency requirements for bank directors

Effective Date: August 1, 2017

Summary: SB 2212 amends N.D.C.C. § 6-03-02, giving much more leeway to the residency requirements for bank directors. The amendments require U.S. citizenship (rather than North Dakota residency) for two-thirds of a bank’s directors (rather than “a majority”). There are no other residency requirements; in our opinion, having 2/3 of the directors be U.S. citizens is an easy standard to meet.

SB 2212 also amends N.D.C.C. § 6-05-06 and the has the same residency requirements for directors of trust companies.

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