

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.

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SOME OF THE RESULTS OF THE 68TH LEGISLATIVE ASSEMBLY

After a busy legislative session, we have summarized a few Bills that may be of interest to bankers:

SB 2263

N.D.C.C.Ch. 47-10.2 (SB 2263 amends four statutes in Chapter 47-10.2, North Dakota's law on escrow accounts.)

Effective Date: August 1, 2023

Senate Bill 2263 brings the North Dakota Century Code in line with the Real Estate Settlement Procedures Act (RESPA) with respect to real estate mortgage escrow accounts and any surplus amounts in those accounts. Section 1 of the Bill amends N.D.C.C. § 47-10.2-01 and replaces the definition of "excess" with "surplus" to track RESPA terminology and provides that any amount greater than or equal to \$50 is considered surplus. It further removes "calendar year" reference as escrow account analysis are to be completed according to RESPA on an annual basis for each escrow account rather than tying it to calendar year. Section 1 also removes the reference to a secondary mortgagee.

Section 2 of the Bill amends N.D.C.C. § 47-10.2-02 and removes the March 1 notice date and specifies notice of surplus escrow amounts must be made within 30 calendar days after the end of the escrow account computation year. This follows RESPA requirements that the servicer must provide written notice to the borrower within 30 days following the computation year if the account has a surplus (\$50 or more above what's needed as a cushion).

Section 3 of the Bill amends N.D.C.C. § 47-10.2-03 and provides that the servicer must refund any surplus amount to the borrower along with the notification required in § 47-10.2-02.

Section 4 of the Bill amends N.D.C.C. § 47-10.2-05 by removing an erroneous citation to medical malpractice statutory law – we're not sure at all how that ended up in there.

HB 1083

N.D.C.C. § 44-06.1-13.1 (HB 1083 amends the statute providing for a notarial act for a remotely located individual.)

Effective Date: August 1, 2023

North Dakota enacted the original Uniform Law on Notarial Acts, and House Bill 1083 enacts the Revised Uniform Law on Notarial Acts.

The revision is in response to changing technology with respect to remote notarization and authorized the performance of notarial acts by means of audiovisual technology.

Section 47-06.1-13.1 now contains the most recent amendment to by setting out the procedure to be followed, providing that the notary and the individual who is to sign the document must be in remote audiovisual contact and an audiovisual recording must be made of the process. The notary displays the document to be signed to the remotely located individual, that individual also has the same document, and then signs it. The individual makes a declaration to the notary under penalty of perjury in the form set out in the statute, and he or she must then send the signed document and the declaration to the notary no later than 3 days after the notarial act was performed. The notary records the individual signing the document and the declaration and after receipt of the document executes a certificate of notarial act in the form set out in the statute. The notarial act is effective as of the date that the remotely located individual signed the document. Additionally, the notary may use communication technology to administer an oath or affirmation to a remotely located individual if the notary identifies the individual, creates an audiovisual recording of the individual taking the oath or affirmation, and retains the recording for at least 10 years. Remote notarizations are often used in the closing of real property transactions when the buyer, seller, and lender cannot physically be in the same place at the same time to consummate the purchase of property. This procedure allows for a timely loan closing in those cases.

HB 1082

North Dakota Century Code Title 41 (HB 1082 enacts and creates and amends various subsections to Title 41, North Dakota's Uniform Commercial Code.)

Effective Date: August 1, 2023

HB 1082 enacted the 2022 Amendments to the UCC, including UCC Article 12, Controllable Electronic Records. The legislative intent is to encourage a more uniform approach to digital assets in commercial transactions: **(i)** the newly promulgated UCC Article 12 governing digital assets or, as the UCC describes them, "Controllable Electronic Records," and **(ii)** amendments to UCC Article 9 detailing the process to obtain and perfect a security interest in Controllable Electronic Records.

Of interest to lenders is that it provides the guidelines for perfecting a security interest in digital assets if a lender takes digital assets as collateral.

HB 1068

N.D.C.C.Ch. 13-13 (HB 1068 created a new chapter of the North Dakota Century Code regulating residential mortgage loan servicers.)

Effective Date: August 1, 2023

Typically, making a residential mortgage loan includes a lender who originates the loan and a servicer who services that loan. Companies may originate loans, service loans, or both, but in North Dakota only the loan originators are required to have a license. House Bill 1068 now require servicers to be licensed and regulated by the North Department of Financial Institutions.

Those entities that must now be licensed by the State of North Dakota must comply with the escrow requirements described in SB 2263 and any other applicable law.

HB 1058

Amends N.D.C.C. § 27-08.1-04 (proceeding in small claims court).

Effective Date: August 1, 2023

This one-sentence amendment makes clear that the North Dakota Supreme Court can award attorney's fees when a small claims case is appealed from the district court. The statute currently provides for an award of attorney's fees to the prevailing plaintiff when the defendant has removed the action from small claims court to district court, but does not address whether this includes attorney's fees when the action is then appealed. Instead of sending the matter back to the district court to decide attorney's fees, the Supreme Court itself may now make an award of attorney's fees to the prevailing appellee.

HB 1291

Amends N.D.C.C. § 28-21-01 (relating to time for execution of a judgment).

Effective Date: August 1, 2023

This amendment changes the time period within which one must execute on a judgment, increasing the time from within 10 years to within 20 years after entry of judgment. Effective August 1, a judgment creditor may proceed to enforce the judgment by execution at any time within twenty years after the entry of judgment. Still remaining is the requirement that a judgment creditor in a mortgage foreclosure may not sit on his or her hands. If the judgment creditor in a mortgage foreclosure does not proceed within 60 days after entry of judgment in the foreclosure to serve a special execution and proceed to a sheriff's sale, any other lienholder or other interested person may obtain the special execution and proceed to arrange for a sheriff's sale.

HB 1225

HB 1225 is an act to provide for an appropriation to the State information technology department to provide grants to counties for expenses related to an online portal for electronically accessible property information and property tax information.

If a county receives a grant, the online portal or online access to electronically accessible property information and property tax information must: **a.** integrate with a computer-assisted mass appraisal system; **b.** use a consistent format to display property and property tax information for all properties; **c.** include any available pictures or sketches associated with each property; **d.** provide access to property tax estimates based on data from a computer-assisted mass appraisal system; **e.** have options to keep exempt and confidential information from being publicly accessible; and **f.** allow users to perform basic and advanced searches of property and property tax information, including search options for comparable sales and by property classification for residential, commercial, and agricultural properties. The resulting information will benefit the banking community with better access to data.

HB 1080

Amends N.D.C.C. § 39-04-55 (relating to electronic motor vehicle registration).

Effective Date: August 1, 2023

This amendment provides for implementation of a mobile motor vehicle registration through the use of any mobile device. Currently, the paper registration card is required to be carried in or on the vehicle; North Dakota Motor Vehicle Department staff testified that it receives about 18,000 (!) requests per year to reprint the registration card due to it being misplaced or damaged. The paper registration card will still be printed and sent with the tabs, but a vehicle owner has the *option* of using electronic registration provided by the DMV.

SB 2111

Amends N.D.C.C. § 39-05-09 (relating to electronic certificates of title for motor vehicles).

Effective Date: August 1, 2023

This amendment provides for implementation of a motor vehicle certificate of title through the use of any mobile device. The same documents are required for an electronic title that are needed for a paper title; however, once the documents are processed, the owner has the option of receiving a paper title or notification of the creation of an electronic title. The information regarding a lien will be shown on the electronic title. When the lien is satisfied, the lienholder will release it electronically and the DMV will provide a lien-free title to the vehicle owner (either as an electronic certificate of title or as a paper document, as the owner chooses.)

SB 2206

Amends N.D.C.C. §§ 28-22-03.1, 47-18-01, 47-18-04, and 47-18-14 (relating to insurance cash value exemptions and homestead exemptions).

Effective Date: August 1, 2023

Changes made to N.D.C.C. § 28-22-03.1, additional exemptions for residents, generally increases exemptions from levy or sale: **a.** in lieu of the homestead exemption, up to \$25,000 (up from \$10,000); **b.** a motor vehicle exemption in one vehicle is at \$10,000 (up from \$2,950) in value over security interests and liens on that vehicle or a motor vehicle exemption in one vehicle not to exceed \$50,000 (up from \$30,000) for a vehicle that's been modified at a cost of at least \$1,500 to accommodate a disabled person; **c.** the debtor's aggregate interest, up to \$10,500 (up from \$1,500) in value in any tools, implements, or professional books of the debtor's trade; **d.** the debtor's aggregate interest, up to \$100,000 (up from \$8,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor; **e.** Any cash deposit not previously scheduled to be made into a life insurance policy or nonqualified annuity over the previous 12 months is not exempt. Benefits are not exempt from enforcement of any order to pay spousal support, child support, or a qualified domestic order; **f.** Certain retirement funds not exceeding \$200,000 for any one account (up from \$100,000) or \$400,000 in aggregate for all accounts (up from \$200,000). SB 2206 also increased the homestead exemption of N.D.C.C. § 47-18-01 to \$150,000 in value over and above liens or encumbrances (up from \$100,000).