

# 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:

Community Banker  
c/o Olson & Burns P.C.  
P.O. Box 1180  
Minot, ND 58702-1180

[olsonpc@minotlaw.com](mailto:olsonpc@minotlaw.com)  
Also, visit our web site at:  
[www.minotlaw.com](http://www.minotlaw.com)

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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## OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180  
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: [olsonpc@minotlaw.com](mailto:olsonpc@minotlaw.com)

**The 2025 Legislative Assembly recently ended after a session seeing 1,089 bills and resolutions introduced and 615 bills passed. In no particular order of importance, those bills that might be of interest to lenders include the following:**

**SB 2164 (Confidentiality with Customer Information):** This bill amends N.D.C.C. § 6-08.1-03, including the North Dakota protection and advocacy project as one of the agencies that a financial institution may disclose customer information in order to report suspected financial exploitation of an eligible adult. This bill makes clear that though a financial institution may disclose customer information for the purpose of reporting financial exploitation of an eligible adult, a bank has no duty under this statute to investigate suspected financial exploitation of an eligible adult nor does this statute impose upon the financial institution a duty to make a report to the protection and advocacy project.

**HB 1127 (Removal of Officers, Directors, and Employees; Cease-and-Desist; Orders):** This bill amends N.D.C.C. § 6-01-04.1 related to the removal of financial institution officers, directors, and employees. The department has authority to remove people from banking for violating laws and regulations, participating in unsafe and unsound practices, or breaching of fiduciary duties or trust. The provision allowing requests for reinstatement after 3 years is removed. The bill also adds that the state banking board or commissioner can issue a prohibition order permanently suspending the person from participation in a financial corporation's affairs if that person has been convicted of any charge (not just a felony) involving dishonesty or breach of trust in state or federal court, including when the individual pled to a lesser charge. This bill also amends N.D.C.C. § 6-01-04.2 to include that a cease-and-desist order can be issued against a financial institution either by the board or by the department; this bill also amends N.D.C.C. § 6-03-02 to provide that the commissioner, in addition to the state banking board, may issue orders or rules regarding permissible activities for banks.

**HB 1080 (Regulation of Appraisal Management Companies):** This bill updates appraisal management statutes (N.D.C.C.Ch. 43-23.5) to bring North Dakota's statutes into compliance with federal requirements such as Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as amended by Dodd Frank and the AMC Rule.

**HB 1149 (Uniform Unclaimed Property Act; Virtual Currency):** The UUPA governs unclaimed property. When deemed abandoned, the holder is required to turn it over to the Unclaimed Property Division of the Department of Trust Lands, which holds it for the owner. This bill amends N.D.C.C. § 47-30.2-04 to add dormancy periods for several types of properties, including a three-year period for virtual currency. The bill also amends N.D.C.C. § 47-30.2-32 requiring holders to liquidate virtual currency and remit the cash value to the state to hold on behalf of the owner. While Unclaimed Property as virtual currency has become increasingly prevalent in North Dakota, the state is not currently equipped to take custody of virtual currency in its native form.



**HB 1447 (Currency Kiosks):** With the rise of Crypto-currency kiosks, often referred to as “Bitcoin ATMs”, there has also been rapid growth in Bitcoin ATM scams and significant consumer financial losses. This bill implements consumer protection against scams by licensing cryptocurrency kiosk operators, requiring the posting of fraud warnings, requiring the clear display of terms and conditions of use of the kiosk, including fees, capping transaction fees, requiring paper receipts, requiring operators to refund fees for fraudulent transactions, and imposing a daily transaction limit of \$1,000 in North Dakota.

**SB 2152 (Real Estate):** N.D.C.C. § 11-18-02.2 requires that deeds presented for filing must bear a statement of the full consideration paid for the property conveyed *or* a statement designating one of the exemptions set out in the law which the grantee believes applies to the transaction. SB 2152 *removes* the existing exemption whereby the disclosure of the full consideration paid for agricultural lands under 80 acres was not required.

**SB 2088 (Data Security Requirements and Implementation Dates for Insurance):** The purpose of this law is to require licensees, which includes both insurance producers and insurance companies, to report to the Insurance Commissioner any cybersecurity events the licensee or its vendors experience. Section 1 strikes out an exclusion from the definition of a “cybersecurity event.” Section 2 includes an overstrike to remove language regarding “materiality.” The legislative concern is that, to a billion-dollar company, the unauthorized release of one policyholder’s confidential information is immaterial from a financial perspective, but is lifechanging to that individual. The licensee must now make a report to the North Dakota Insurance Department if even one consumer were potentially harmed.

Section 3 is an overstrike from the confidentiality section of the law which gives the Department the authority to examine a licensee which has experienced a cybersecurity event within N.D.C.C. § 26.1-03. Under that statute a written report of examination must be issued. The overstrike could allow a licensee to prevent the release of an examination report.

Section 4 removes certain licensee exemptions and clarifies what sections of the law apply to small licensees – those with less than \$5,000,000 in gross revenue or less than \$10,000,000 in year-end assets. This exempts small licensees from maintaining a full Information Security Program but still requires a program that is commensurate with their size and complexity. The last change made in section 4 is related to a licensee subject to HIPAA.

Section 5 repeals the staggered implementation dates of exemptions in the data security bill as passed in 2021. This statute requires licensees to report a cybersecurity event to the North Dakota Insurance Department and strengthens its role as a consumer protection agency.

**SB 2229 (Disclosures Before Sale of a Condominium):** The Bill enacts a new section to the “Real Property Transfers” statutes in chapter 47-10 of the Century Code, relating to required disclosures before

the sale of a condominium unit or a property subject to a homeowners' association or a condominium project. The Bill protects and educates homeowners, who should be informed about association matters that may impact their decision to purchase a home. The documents disclosed during a real estate transaction educate them about their personal rights and responsibilities with regard to the community association so buyers know what they are buying. These disclosures advise buyers of facts such as basic rules and financial health of the community, structural health of shared amenities, information on assessments, and insurance held by the association.

**SB 2356 (Deed/Contract for Deed):** This bill amends N.D.C.C. § 47-19-03.1 to correct the problem of recorders rejecting deeds (after closing) because the legal description is in metes and bounds. This occurs even though the property may have been transferred for years using the legal descriptions from prior deeds. North Dakota is a race-recording state, meaning that rights are established and protected when notice of ownership is created at recordation of the deed. When the deed is not timely recorded because the recorder rejects a prior metes and bounds description, significant risk to the new owner occurs. Under N.D.C.C. § 57-02-39, the county has the right to require property owners to plat property, especially if the precise location of the land may not be easily ascertained. SB 2356 does not remove the county's right, but it does not allow that right to be exercised to reject a deed when the same legal description is used as the prior conveyance.

**SB 2122 (Uniform Commercial Real Estate Receivership Act):** This bill fully replaces the current receivership statutes found in N.D.C.C. ch. 32-10, which gave little guidance and caused varied outcomes from court to court. SB 2122 adopts the Uniform Commercial Real Estate Receivership Act, bringing North Dakota law into conformity with the uniform practice for the appointment of receiverships and how the procedure is handled.

**SB 2123 (Uniform Special Deposits Act):** This bill enacts law governing special deposit transactions. Special deposits are established for a particular purpose, and a beneficiary's entitlement to payment is determined only after a contingency has occurred. The contingency may be closing of a real estate sale, distribution of funds to class members after settlement, or distribution of a commercial tenant's security deposit when the leasehold ends. These deposits ensure funds will be available to the person entitled to them in the future. The simplicity of the deposit account mechanism, its relatively low cost, and the fact that banks typically provide a return on the principal balance of deposits in the form of interest make the special deposit attractive. While they are a vital component of our banking infrastructure, legal uncertainties have caused many to avoid using special deposits. Case law has analogized special deposits to a trust, bailment, or custody arrangement; however, these characterizations are anachronistic in the context of modern banking. The attributes that make a deposit "special" are also uncertain under current law. The Act clarifies the definition of "special deposit," the treatment of a special deposit in the event of a depositor's bankruptcy, the applicability of creditor process to a special deposit, and the legality of the bank exercising a set-off or right of recoupment against a special deposit unrelated to a payment to a



beneficiary or the special deposit. The Act creates a definite and clear right to payment when a contingency is satisfied and upon notice to the bank. The Act also provides a low-cost mechanism to return earnest money to its rightful owner.

**SB 2127 (Uniform Electronic Estate Planning Documents Act):** This bill creates N.D.C.C. ch. 59-22 and authorizes the use of electronic documents and electronic signatures for non-testamentary estate planning documents, including trusts, health care directives, durable powers of attorney, and more. Use of electronic documents and signatures is optional, and an electronic signature is attributable to a person if it was created by the act of the person, which can be shown in any manner, including by showing the efficacy of a security procedure applied. Under N.D.C.C. § 59-22-11, an individual may create a certified paper copy of an electronic nontestamentary estate planning document by affirming under penalty of perjury before a notary public that the paper copy is a complete and accurate copy of the document.

**HB 1507 (Cooperative Financial Institutions):** This bill creates a new section in Title 6 of the Century Code, which contains North Dakota's banking law, permitting a "mutual ownership structure" in North Dakota with a state charter. Prior to this bill, the only option for a mutual bank in North Dakota was by federal charter. Mutual bank, cooperative financial institution, or savings and loan association are different names for a financial institution in the form of bank which is not owned by shareholders but is a not-for-profit entity with a cooperative ownership structure.

HB 1507 uses existing laws governing community banks to also apply to cooperative banks, unless specifically exempt. The bill only creates one new section of law within title 6 to address areas unique to a cooperative financial institution. Generally, it adds or amends several definitions, such as adding cooperative financial institution to the definition of "bank." This allows the agency to regulate two distinct charters with the same set of laws where possible.

The bill also addresses fees for organizing, branching, and converting as established in § 6-01; fees are set at rates comparable to those of community banks for the same activity. Several sections of HB 1507 exempt cooperative financial institutions from governance-type rules within § 6-02 and § 6-03 designed for stock-issuing community banks because no stock is issued with a cooperative bank model. Sections 7, 8, and 9 of SB 1507 create processes specific to a cooperative financial institution's conversion and branching activity within § 6-03, and exempts cooperative financial institutions from surplus requirements ("surplus" is a term connected with stock issuance). Section 10 of HB 1507 is a new section of law and establishes the corporate existence, governance, capital, and conversion for cooperative financial institutions. Other sections address corporate governance, liquidation, etc.

**HB 1354 (Appraisal Evaluation and Standards):** This bill creates a new section to N.D.C.C. ch. 43-23.3, adding appraisers to the list of providers who can perform evaluations for financial institutions regulated by federal agencies under the Interagency Appraisal and Evaluations Guidelines. The purpose of the bill

is to modernize restrictions in the Century Code and improve service options for lenders and consumers. “Evaluations” are valuation products used by financial institutions to estimate the market value of real property for transactions below certain de minimis thresholds. Unlike full appraisals, evaluations are not required to comply with USPAP but must meet sound banking practices and reliability standards. The Interagency Guidelines explicitly recognize appraisers as qualified to perform evaluations. Regulatory oversight of these products remains the responsibility of financial institutions to ensure compliance and quality. Note that an evaluation prepared or provided by an appraiser under this section must be identified conspicuously as an evaluation and not an appraisal.

**HB 1127 (Data Security for Non-Banks):** Section 5 amends N.D.C.C. § 13-04.1-01.1 to add a definition of a “loan” to the money broker definitions statute. This money broker statute applies to all non-bank lenders, other than the ones doing mortgage lending (see Residential Mortgage Lenders under Ch. 13-12 and Mortgage Loan Originators under Ch. 13-10). The new definition of “loan” includes “alternative financing products.” Recent years have seen an increase in creative financing products entering the marketplace, and this new definition gives the State the ability to include these products into the existing law as they are issued.