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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YOU ARE ASKING . . . .

Q: What are the requirements as to how long our bank has to retain statements and account notices that were sent out to customers but were returned to us because of an invalid address or no-longer-at-this-address?
A: There are no rules obligating the bank to hold and store physical statements or notices that can be electronically reproduced if needed.

Q: I might be over-thinking our mailing of the bank statement for a Uniform Transfers to Minors custodial account. We've always sent the statements to the custodian, but I'm wondering if there must be a second mailing - to the address of the minor along with that of the custodian. Does a copy of the statement have to be mailed to the minor?
A: Do not send a bank statement to the minor. North Dakota law does not require that a bank send the statement for a UTMA account to the minor. The person who should get the statement is the person who opened the account – the account customer. Under the UTMA, the custodian is the account customer. Another issue is that the custodian of the account might not even *want* the minor to be made aware that the account exists until it's time to terminate the custodianship under N.D.C.C. § 47-24.1-20. The minor is the beneficial owner of the funds in the account, but not of the account itself. If the custodian wants the minor to know about the account and what's in it, the custodian (not the bank) can disclose that information to the minor.

Q: Can our bank take as collateral and perfect a security interest in a Series E United States savings bond?
A: That would be a definite "no." According to 31 C.F.R. § 353.16, "A savings bond may not be hypothecated, pledged, or used as security for the performance of an obligation."

Midfirst Bank v. Young, 2025 ND 206 (Dec. 04, 2025)

MidFirst Bank is a Federally Chartered Savings Association. James and Tahnee Young are defaulting borrowers who raised a number of issues, including fraud, in the Cass County district court, lost there, and then appealed the district court's judgment.

In April 2016, James and Tahnee Young executed a promissory note for $275,793.00 and a corresponding mortgage on property located in Fargo. The original lender was The Mortgage Company, Inc., with the mortgage naming Mortgage Electronic Registration Systems, Inc. (MERS), as nominee. MidFirst Bank took ownership of the note in July 2022; it received the Youngs' last payment on the note in February 2023. MidFirst served them with a foreclosure notice in December 2023 and served and filed a foreclosure complaint in February 2024. The Youngs answered and asserted counterclaims for fraudulent misrepresentation, violation of the Fair Debt Collection Practices Act, violation of the Fair Credit Reporting Act, violation of the Real Estate Settlement Procedures Act, unjust enrichment, coercive collection practices, and constructive fraud. The Youngs' theory rested primarily on allegations that the assignment's signature was either "robo-signed" or forged; they provided "support" for this theory by affidavits from three purported handwriting experts. In July 2024, the district court granted MidFirst's cross-motion for summary judgment and denied the Youngs' motion for summary judgment.

On appeal, the Youngs argued, among other things, that three affidavits from alleged handwriting experts raised a factual issue about MidFirst's authority to foreclose, making summary judgment in this action inappropriate. MidFirst claimed that the Youngs lacked standing to allege fraud in the assignment contract because they were *not parties* to the assignment. Because the Youngs did not have standing for the fraud claim, MidFirst claimed that it was entitled to foreclose in all other respects.

Under North Dakota law, a nonparty to a contract has no rights infringed by fraud in that contract. *See* N.D.C.C. § 9-03-08. The district court held that the Youngs did not raise a genuine issue of material fact because they lacked standing to challenge the mortgage assignment. The North Dakota Supreme Court agreed with the district court that the Youngs did indeed lack standing to challenge the mortgage assignment because, again, they were not parties to it. The assignment involved only an assignor and an assignee, MidFirst. The Youngs were not parties to the assignment and failed to demonstrate otherwise that their rights could be infringed by a fraudulent assignment.

Moreover, even if the assignment *were* fraudulent, as nonparties the Youngs would not have had their rights infringed. So, as nonparties, the Youngs lacked standing to allege fraud in the assignment contract and therefore failed to raise a genuine issue of material fact. MidFirst established that it is entitled to foreclose on the Youngs' property as a matter of law *regardless* of any dispute about the assignment of the mortgage because a party holding a note secured by a mortgage may pursue foreclosure under the terms of the mortgage. In North Dakota, ownership of a mortgage passes along with ownership of the note. The record showed that that MidFirst held the note and that it did not violate the terms of the mortgage or any law when foreclosing.

The Youngs also raised other issues that the North Dakota Supreme Court did not find warranted reversal. For our purposes, we like this case because it reiterates that lenders may enter into assignment agreements without fear of the mortgagor because as a non-party to an assignment, a mortgagor lacks standing to challenge a mortgage assignment between the assignor and assignee.