NDBA Live
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Special Guest: Bernie Sinner | President and Senior Lending Officer, BankNorth

Please welcome this month's guest, Bernie Sinner! Bernie is the President and Senior Lending Officer of BankNorth. He was recently elected as a Class A Director to the Federal Reserve Bank of Minneapolis Board of Directors for a three-year term beginning January 1, 2026. Bernie also serves on the Board of Directors of NDBA, where he is the Chair.

Bernie will be discussing why NDBA is important to him and his bank, what new bankers should know about NDBA, and how involvement can benefit them throughout their careers. He'll also share insights from his own banking journey and what the profession has meant to him.

Member Questions

Question 1: I wanted to reach out to see if the NDBA had any guidance for North Dakota banks on how to handle ICE agents at one of your locations.

Response: **First and foremost, banks cannot disclose customer information without valid legal process.**

ICE stands for Immigration and Customs Enforcement and it is a government law enforcement agency. Both State and Federal law limits the government's right to Bank Customer Information.

The Federal Financial Privacy Act requires a subpoena, court order or the customer's consent. Here is a link to the Federal Reserve Regulatory Service page that gives the background and summary of the Right to Financial Privacy Act: Background and Summary of the Right to Financial Privacy Act.

Chapter 6-08.1 of the North Dakota Century Code is somewhat similar to the Federal Law and generally prohibits the disclosure of Customer Information to the government (or anyone else) without valid legal process. See in particular section 6-08.1-05 ("Government access").

Please remember that a Bank must disclose customer information if it pertains to a situation requiring a SAR, BUT only pursuant to the federal regulations regarding suspicious activity reports under the Bank Secrecy Act, dealing with Currency Transaction Reports and Suspicious Activity Reports. The Bank, however, must follow those regulations.

Similarly, North Dakota allows disclosure under 6-08.1-06. Suspicion of unlawful conduct. Again, the Bank must follow that section of the North Dakota Century Code.

Each law must be followed and before any specific bank policy regarding ICE is implemented, I strongly recommend getting advice from legal counsel.

Thank you again for your question. I think it is both timely and also serves as a broader reminder of how to deal with government requests for information.

Question 2a: I'm hoping you can help direct me to a definitive answer on whether or not the ND DOT would honor a digitally signed Power of Attorney form without a notary. It sounds like they have accepted them in the past, so we are wondering if this was the norm and if there is a specific DOT procedure, Admin rule or NDCC that codifies the acceptance.

Response: **North Dakota's Durable Power of Attorney statute is found in Chapter 30.1-30 of the North Dakota Century Code and is older than the most recent 2006 Uniform Power of Attorney Act (UPOAA) (ND did not enact the 2006 version).**

ND's version is not as detailed as the 2006 version and ND does not specifically require a notary. I think, however, that most institutions require a notary to prove the true and accurate signature as a matter of best practice.

Question 2b: Your response regarding the notary not being a requirement makes sense, but I just wanted to make sure about the piece of it being a digital or electronically signed POA as well. Curious as to how the Esign act might play into this being a limited POA.

Response: **The E-Sign Act differs to State Law for prohibited contract signatures and therefore the POA could be E-Signed in North Dakota if the POA is governed by North Dakota Law and if it does not need to be recorded with the recorder's office for any reason.**

There are a lot of ifs associated with a question about notaries and electronic signatures and the Bank may also choose to deny any POA if it has a

reasonable belief that it is suspicious. Your Bank may also have a policy to only accept a notarized POA.

Question 3: We have an adult woman with down syndrome whom her mother has been caring for her. Her mother does not have guardianship over her and is not listed as a Social Security Representative. The daughter receives social security benefits, and the mother wants to open an FBO account for the benefits to go into. The reason she has provided for the FBO is concerns that a third-party will bring her daughter in and have her pull money out for the third-party.

I am just really not sure how to proceed with this account as she did inform me her daughter is capable of caring for herself and could sign her own signature card etc. and she does not have any court documentation saying she can control her money.

Response: **Thank you for your question. As counsel for NDBA I cannot offer legal advice, but I can tell you a few things that might be applicable.**

First you would need to, if social security would allow, funds of a recipient to be deposited in a For the Benefit of Account. My understanding is that an FOB account is owned, not by the person it is for the benefit of but in this instance would be owned by the mother for the benefit of the daughter. The recipient of social security must own the account even if it is jointly owned.

The question is whether the daughter is capable contract. Opening a bank account is the result of a contract. Many people with disabilities are quite capable of entering into contracts. The daughter would need to consent to another person being on the account and the ownership of the other person could be restricted. However, the daughter's ownership cannot be restricted and if that is the mother's intention she will need to get a court order's guardianship.

I have to remind you that your question may have factual differences from my interpretation and that you should do your own research or hire a lawyer for specific direction.

Rocket Mortgage Class-Action Lawsuit

Rocket Mortgage is facing a newly filed class-action lawsuit alleging an illegal steering and referral-fee arrangement involving Rocket Homes realtors. The suit claims Rocket used its marketing platform to generate borrower leads, referred those borrowers to affiliated real estate agents in exchange for a 35% referral fee, and that those agents then steered clients back to Rocket Mortgage for financing, even when better loan options were available. Plaintiffs allege borrowers who entered through this referral network paid higher interest rates than borrowers who approached Rocket independently.

The lawsuit was filed by Hagens Berman, a prominent plaintiffs' firm known for major antitrust and consumer cases, including the $1 billion National Association of Realtors (NAR) commissions

case and a similar steering lawsuit against Zillow. Reports indicate the Consumer Financial Protection Bureau (CFPB) investigated the conduct for several years prior to the filing.

Steering practices are prevalent, including joint venture arrangements, builder-lender partnerships, referral networks, and "preferred lender" programs. Increased scrutiny of these practices may improve competitive conditions for local lenders.

CFPB Funding Update and Potential Impact on Rulemakings

Under the D.C. Circuit's December 30 order, the Consumer Financial Protection Bureau (CFPB) must continue operating and seek funding to do so. In accordance with the order, CFPB's Acting Director Russel Vought has submitted a $145 million funding request to the Federal Reserve for Q2 FY26 (Jan–Mar).

According to Katie Wechsler, with this funding in place, the CFPB's previous reason for using interim final rules (lack of funding) no longer applies; and, as a result, the CFPB may now issue a final rule for Regulation 1071 (small business lending data) and a proposed rule for Regulation 1033 (consumer financial data).

OCC Proposes Preemption of State Interest-on-Escrow Laws

The Office of the Comptroller of the Currency (OCC) issued two related proposals seeking public comment on national banks' and federal savings' associations' real estate lending powers concerning interest on escrow accounts. One proposal would codify the longstanding authority of these institutions to establish and manage real estate escrow accounts—giving them flexibility over terms such as paying interest or other compensation and assessing fees. The second would issue a preemption determination finding that federal law preempts state laws that restrict this flexibility. Comments on both proposals are due within 30 days of publication in the Federal Register. [Link]

Notice of Proposed Rulemaking: Real Estate Lending Escrow Accounts

Notice of Proposed Rulemaking: Preemption Determination: State Interest-on-Escrow Laws

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2026 Federal Reserve Supervisory Reform: Highlights from Vice Chair Bowman

During the California Bankers Association's 2026 Bank Presidents Seminar, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System Michelle Bowman discussed efforts to modernize supervision and regulation.

In her remarks, Bowman first describes the work done since her June 2025 speech, focusing on shifting supervision toward identifying and remediating material financial risks that actually threaten safety and soundness. She highlights new supervisory principles intended to sharpen examiner focus and eliminate outdated practices like "reputational risk," and she notes recent changes like rescinding climate guidance. She also discusses the proposal to re-calibrate the community bank leverage ratio (CBLR) to the statutory minimum and modification of the enhanced supplementary leverage ratio (eSLR).

Bowman also discusses the path forward, including:

- **Improving Supervision — Memorializing Changes in Regulation.** She summarizes proposed regulatory changes that will formalize the recent supervisory refocus, such as defining "unsafe and unsound" practices and removing "reputation risk" from the supervisory process, in line with other federal banking agencies.
- **Updating and Indexing Asset Thresholds.** Bowman discusses the problem with fixed asset-size thresholds (like $10 B for community banks or $100 B for large banks) that don't adjust for growth or inflation. She suggests updating those thresholds and potentially indexing them to economic measures so regulations stay relevant over time.
- **Supervisory Portfolios.** This part talks about tailoring supervision to match banks' actual risk profiles and complexity rather than treating all banks the same based on simple size cutoffs. For community banks, she suggests an oversight program tailored for their simpler structures and lower systemic risk.
- **Material Financial Risk.** Bowman states that exams should prioritize material financial risks using reasoned judgment rather than box-checking procedural items.
- **Reducing Overlap in Examinations.** Bowman notes the requirement that the Fed rely "to the fullest extent possible" on examinations performed by a subsidiary bank's primary state or federal supervisors. She states that, to do this, the Fed must have confidence in the supervisory processes and outcomes of exams completed by the OCC, FDIC and state banking agencies; and this requires access to and a thorough review of examination reports and activities.
- **Reports of Examination and Supervisory Ratings.** The Fed is implementing several initiatives to ensure examination findings and reports focus on material financial risk
- **Reporting and Applications.** The Fed is reviewing bank requirements to provide data or other information to ensure that collection remains relevant and necessary for supervisory purposes.
- **Transparency.**
    - Bowman highlighted the restrictive nature of "confidential supervisory information" (CSI) and how overly broad CSI definitions can limit beneficial information sharing among banks and even shield abusive supervisory practices. Accordingly, the Fed is reviewing approaches to better define or create circumstances in which CSI can be shared.
    - The Fed is making an effort to publish manuals it uses for supervision in an effort to enhance transparency and give insight into supervisory operations and expectations.

Upcoming Events

NDBA has many exciting and informational events planned. Below are some special dates to mark on your calendars!

- **Dakota School of Lending Principles** | April 7-10, 2026 | Ramkota Hotel, Pierre, SD
- **Opening New Accounts Seminars** | April 22 & 23, 2026
- **Tri-State Trust Conference** | April 27-29, 2026 | Holiday Inn, Fargo
- **FDIC Directors College** | **May** 19, 2026 | Radisson Hotel, Bismarck
- **Dakota School of Banking** | May 31 – June 5, 2026 | University of Jamestown, Jamestown, ND
- **NDBA/SDBA Annual Convention** | June 15-17, 2026 | Bismarck, ND
- **National School for Beginning Ag Lenders** | June 22-25, 2026 | Spearfish SD
- **NDBA Ag Credit Conference |** October 1-2, 2026 | Hilton Garden Inn, Fargo

STOPPING PAYMENT ON CASHIER'S CHECKS: UNDERSTANDING THE 90-DAY RULE

General Rule: Banks Cannot Immediately Stop Payment on a Cashier's Check

Cashier's checks are governed by Article 3 of the Uniform Commercial Code (adopted in North Dakota as Ch. 41-03, N.D.C.C.). The issuer of a cashier's check is generally obliged to pay the instrument according to its terms.[i] If the issuing bank wrongfully refuses to pay a cashier's check, the person asserting the right to enforce the check may be entitled to recover expenses, loss of interest and, in some cases, consequential damages.[ii] As a result, banks generally may not stop payment on a cashier's check merely because a customer requests it.

Limited Exception: Lost, Stolen or Destroyed Cashier's Checks

Section 3-312 of the Uniform Commercial Code (UCC)[iii] provides a narrow statutory process that applies when a cashier's check is lost, stolen or destroyed before it is paid. This provision allows a remitter (i.e., customer) [iv] or payee[v] to make a claim to the amount of the check – but only after a mandatory waiting period.

Declaration of Loss Requirements

To assert a claim under UCC § 3-312, the claimant must submit a declaration of loss, which is a written statement made under penalty of perjury that:

- The declarer lost possession of a check;
- The declarer is the remitter or payee of the check;
- The loss of possession was not the result of a transfer[vi] by the declarer or a lawful seizure; and
- The declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

The 90-Day Rule: Timing and Effect of a Claim

Once a proper declaration of loss is submitted:

- The claim becomes enforceable at the later of:
  - The time the claim is asserted; or
  - The 90th day following the date of the check.
- Until the claim becomes enforceable:
  - The claim has no legal effect; and
  - The bank must pay the check if it is presented by a person entitled to enforce it[vii]. Such payment discharges all liability of the bank with respect to the check.

After the Claim Becomes Enforceable

If the claim becomes enforceable before the check is presented for payment:

- The bank is not obligated to pay the check; and
- The bank becomes obligated to pay the amount of the check to the claimant.

If the bank pays the claimant and the check is later presented by a holder in due course, the claimant must:

- Refund the bank; or
- Pay the amount of the check to the holder in due course if the check is dishonored.

[i] N.D.C.C. § 41-03-49 (3-412).

[ii] N.D.C.C. § 41-03-48 (3-411).

[iii] Adopted in North Dakota as N.D.C.C. § 41-03-37.1.

[iv] "'Remitter' means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser." N.D.C.C. § 41-03-03(1)(k) (3-103)

[v] Payees may also enforce a lost, destroyed or stolen cashier's check pursuant to N.D.C.C. § 41-03-35 (3-309). Notably, both 3-312 and 3-309 require the payee to have had possession of the cashier's check at some point.

[vi] "An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." N.D.C.C. § 41-03-22(1). "Delivery" means voluntary transfer of possession. N.D.C.C. § 41-01-09(2)(o) (UCC 1-201). Accordingly, a transfer requires voluntary transfer of possession.

[vii] "'Person entitled to enforce' an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument under section 41-03-35 or subsection 4 of section 41-03-55." N.D.C.C. § 41-03-27 (UCC 3-301). "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument." *Id.*

A "holder" is defined, in relevant part as "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." N.D.C.C. § 41-01-09(2)(v) (UCC 1-201). "'Bearer' means…a person in possession of a negotiable instrument…that is payable to bearer or indorsed in blank." N.D.C.C. § 41-01-09(2)(e) (1-201).

A nonholder in possession of an instrument includes a person that acquired rights of a holder by subrogation or under Section 3-203(a). It also includes both a remitter that has received an instrument from the issuer but has not yet transferred or negotiated the instrument to another person and also any other person who under applicable law is a successor to the holder or otherwise acquires the holder's rights." Official Comment to UCC § 3-301.