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ADA Lawsuits Continue; Still No Guidance About What is Required for Compliance

North Dakota compliance professionals asked NDBA for a quick update about the status of ADA compliance. Unfortunately, lawsuits continue to be filed while the Justice Department continues to fail to issue guidance or regulatory standards so banks and retail establishments know what it is they are supposed to do to be in compliance with the law.

Since the beginning of January, at least two major chains have been sued in class actions by the same plaintiff: Burger King and the Morton Williams supermarket chain. At issue is website access for visually impaired persons. The absence of standards has caused some courts to dismiss ADA claims on the basis that it violates due process to hold retail entities to non-existent standards. At least one court has concluded a credit union website is not a place of public accommodation.

As confusion reigns, the Justice Department shows no signs of promulgating regulations or technical standards to bring some order to the situation.

Uniform Law Commissioners May Tackle Several Matters of Interest to Banks

The Uniform Law Commission has adopted new “model” laws and formed several committees to assess study projects for matters of direct interest to and impact upon banks. They address virtual currency regulation/supervision, an update to the Uniform Fiduciary Income and Principal Act (UPIA) which was last revised in 1997, projects to revise UCC Articles 1,3 and 9, a task force to study remote notarization, and, last but not least, a drafting committee for electronic wills drafting.

Additional information about the new model acts and about how banks, as interested members of affected industries, can observe and comment upon the study projects is available at the ULC website, www.uniformlaws.org. The project for bank garnishments has numerous bank-affiliated observers, including observers from NDBA and other North Dakota institutions. Representative Larry Klemin, a ULC commissioner, is one of the study committee members.

Credit Union Desiring to Serve Marijuana Related Businesses is Conditionally Approved for Fed Master Account

It has been a long, hard effort but The Fourth Corner Credit Union has received conditional approval for a Fed master account so it can pursue its business plan to provide comprehensive financial services to support businesses and individuals who serve and support the marijuana industry. The decision for conditional approval was made by the Federal Reserve Bank of Kansas City. The conditional approval settles litigation between the credit union and the Fed and is founded on the credit union’s commitment NOT to serve “plant touching” marijuana-related businesses (MRBs) themselves, unless and until doing so becomes permitted under federal law. The conditional approval allows the credit union to provide banking and financial services to “pot-adjacent” businesses such as businesses, trade associations, approved charities, accountants, landlords, technology, and service providers which support, but are not themselves, MRBs. Permitted customers include employees of these service providers, but not employees of an MRB. The conditional approval is seen as a big step forward for the credit union; however, it cannot actually open for business until it has obtained approval from Colorado state regulators and has also obtained share/deposit insurance from NCUA.

The NDBA Legal Update is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Bankers Ask About Campaign Account Requirements

With the upcoming mid-term elections, banks are likely to be receiving state and local candidate requests to open campaign accounts. An NDBA member recently asked what is required to open these accounts. Keep in mind that candidates for federal office must meet requirements set by federal laws and regulations.

The North Dakota Century Code in Chapter 16.1-01 governs North Dakota campaign laws, and the General Provisions of 16.1-01-01 give the Secretary of State authority to supervise election procedures stating that the Secretary of State must be, ex officio, supervisor of elections and may employ additional personnel to administer this title. The Federal Election Commission website is also a great resource for federal campaign questions: <https://www.fec.gov/>. The pages for candidate guidance and legal resources are particularly helpful.

Our NDBA member asked about requirements for a North Dakota campaign. NDBA's newly appointed associate general counsel, Tracy Kennedy, (tracy@ndba.com) provided guidance:

“Campaigns, whether it is a political committee or a candidate, must register with the North Dakota Secretary of

State as per Chapter 16.1-08.1 of the North Dakota Century Code. See specifically 16.1-08.1-03.2(1), which by the way will change slightly on January 31st of this year. The process of registering looks much like incorporation but the committee and candidate do not receive any certificate from the State. A political committee might, however want to incorporate, which is anticipated in Chapter 16.1-08.1, and in such case should be treated as a corporation opening a bank account.”

The North Dakota Secretary of State's website (<http://sos.nd.gov/>) dealing with campaign finance and candidates includes search capabilities for registered filers. A bank can search to see if the candidate or political committee has filed and to see the other information required in Chapter 16.1-08.1 regarding if the political committee is incorporated and who the agents are for the committee or the candidate. Title 16.1 includes several chapters, but all essentially give the Secretary of State control over elections and campaigns.

Note also that the IRS states that campaign committees for candidates are political organizations subject to the Federal Tax Code and must obtain a TIN or EIN. Further information can be found in IRC Section 527.



Marilyn Foss
NDBA General Counsel

Role of the General Counsel

North Dakota Bankers Association is extremely fortunate to have the expertise of Marilyn Foss on staff. Marilyn has been with the association for over 19 years as general counsel and has served our members and staff with great professionalism.

NDBA's general counsel serves as the attorney for the association. Although she is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

To contact Marilyn Foss, NDBA General Counsel, call 701.223.5303 or email at marilyn@ndba.com.