
ASK KENNEDY

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DISCLAIMER: THESE MATERIALS PROVIDE GENERAL INFORMATION AND ARE INTENDED FOR EDUCATIONAL PURPOSES ONLY. THESE MATERIALS DO NOT PROVIDE, NOR ARE THEY INTENDED TO SUBSTITUTE FOR, LEGAL ADVICE.

Special Guest Tara McFadden, Choice Bank

Tara will talk about her experience as an emerging leader at the Washington Summit.

Member Questions

Question #1: We had two questions requesting clarification on when notice to the commissioner is required for bank closures and operations during an epidemic or emergency:

- a. Is notification to the commissioner required if a bank location is closed for an entire day, closes early, or opens late due to weather?
- b. Is the use of the website, social media and signs on the doors sufficient to satisfy the customer advance notice requirement?

Response: North Dakota Century Code [6-03-15.2](#) governs the requirements for notification of the commissioner in a situation such as described above. The statute is written quite broadly, and since Notice is to be given to the Commissioner of the NDDFI, my suggestion is to email the Commissioner of the NDDFI and notify them of the temporary closure. It may be wise to make a simple email notification to the Commissioner a part of your standard emergency closure procedure. Additionally, while posting it online or on the door is not required by the statute, it may certainly be a smart idea to do so as a “cover all the bases” procedure.

Question #2: We had a question regarding CNS filings:

Does a CNS merely assure the bank’s name will be on the check when the calves and/or grain is sold, or is a CNS required to be perfected?

Response: [Section 41-09-40 \(9-320\) of the North Dakota Century Code](#) controls here. This section states that a buyer of farm products buys the farm product free and clear of any security interests *unless* a proper CNS is filed. The CNS does not affect perfection and priority against any other creditor of the farmer, but it is meant to protect Ag Buyers to allow them to purchase farm products without checking the UCC records. These buyers must, however, check the CNS, as the two systems are different and the CNS wasn’t electronic for many years.

One additional issue to watch out for – a Bankruptcy Trustee may act like a buyer in the ordinary course of business, allowing the Trustee to also avoid a bank’s security interests in cases where the bank has failed to file a CNS.

Also take note that sometimes buyers do not issue checks these days and might just go with an ACH or even try to set off what is owned to buyer (elevator). Your Security Agreement, along with state law, will allow you to contact anyone that might owe your borrower an account for the purchase of the crop or livestock directly to notify them of your lien and to demand the payment.

The best practice is to make sure you file your UCC-1 for Perfection and Priority and a CNS to hold the buyer of the farm product responsible for payment. Note again that the whole “check” language is becoming antiquated and problematic.

CFPB Updates Mortgage Servicing Exam Procedures

The CFPB has released its updated Mortgage Servicing Examination Procedures. The Examination Procedures describe the types of information that CFPB examiners gather to evaluate mortgage servicers’ policies and procedures; assess whether servicers are complying with applicable laws; and identify risks to consumers related to mortgage servicing. The updated Examination Procedures include CFPB guidance released since the last update in June 2016. A link to the Update can be found [here](#).

White House Crypto Roadmap

On January 27, 2023, the White House released “[The Administration’s Roadmap to Mitigate Cryptocurrencies’ Risks](#).” The roadmap states that some cryptocurrency entities ignore financial regulations and risk controls designed to protect consumers, and notes that the banking regulators are issuing guidance to separate risky digital assets from the banking system. The Administration further makes several recommendations to Congress to create legislation relative to cryptocurrency entities, while discouraging relationships between cryptocurrencies and traditional financial institutions.

Trusted Contacts

CFPB's Office for Older Americans recently interviewed adults in their 60s, 70s and 80s about their banking needs. The small number of older adults they spoke to largely felt confident that they could manage their finances independently, but weren't sure if they might need help in the future.

Of course, many people experience cognitive or physical changes as they age, which may impair their ability to visit their financial institution and manage their finances independently. Diminished financial capacity is a term used to describe a decline in a person's ability to manage money and financial assets to serve their best interests, including the inability to understand the consequences of investment decisions. Some banks and credit unions offer special accounts or features that specifically benefit older customers or members. Most of these age-friendly banking products or services also are a way to prevent fraud, scams and elder financial exploitation, which can be financially and emotionally devastating.

One of these anti-exploitation banking services involves choosing a trusted contact. A trusted contact is someone bank or credit union staff can call if they suspect that an account holder is experiencing fraud, a health crisis or another emergency that affects their financial affairs. Further, a trusted contact does not have access to the account holder's money or financial information, and they are only notified if the financial institution has concerns about the account holder's financial safety, so that the trusted contact can step in and help resolve the situation. To help promote this service to financial institutions across the country, the CFPB released a [Trusted Contact Guide](#).

DOT, UDAAP, & Southwest Airlines

The U.S. Department of Transportation is investigating the Southwest Airlines holiday travel debacle, which left thousands of travelers stranded for days. The investigation comes as the airline reported a \$220 million loss last quarter and further losses in the first quarter. Southwest canceled more than 16,700 flights over several days in late December. While a massive winter storm caused the initial cancellations, the company's outdated software systems turned what should have been a normal problem into a snowballing disaster that lasted for days after other airlines had resumed their usual operations. The department's investigation will look into whether Southwest made unrealistic flight schedules, which under federal law is considered an unfair and deceptive practice (UDAAP). DOT has also made clear to Southwest that it must provide timely refunds and reimbursements and will hold Southwest accountable if it fails to do so.

The UDAAP has its roots in the Dodd-Frank Act, which provides the CFPB with its rulemaking, supervisory, and enforcement authority against unfair, deceptive, and abusive practices, as well as the Federal Trade Commission Act of 1914, which directly prohibits such acts and practices with a focus on anti-trust violations. With the FTC Act and UDAAP in particular, the government places a special emphasis on protecting against unfairness both legislation and practice, especially as it pertains to unfair competition.

Both the CFPB and the FTC also govern banks and financial institutions, with varying levels of regulation and enforcement based on whether or not a financial institution is state or federally chartered. It is important to recognize, as is the case with Southwest, that the CFPB and the FTC have a broad range of powers available to them in order to promote this financial and commercial "fair play". As it pertains to financial institutions, the CFPB and the FTC tend to lean towards the consumer when it comes to matters that fall within their exceptionally large purview; all financial institutions should thus be vigilant in keeping up to date with both organizations' recommended practices and procedures.

North Dakota Legislative Update

Keep up with the 2023 Legislative Session with NDBA's [Legislative Updates](#).

Upcoming NDBA Events - 2023

NDBA has many exciting and informational events planned for 2023. Below are some special dates to mark on your calendars!

SCHOOLS

Compliance School | May 22-25, 2023

Dakota School of Banking | June 11-16, 2023 | University of Jamestown, Jamestown, ND
[Click for more information](#)

National School for Beginning Ag Bankers | June 26-29, 2023 | Black Hills State University, Spearfish, SD
Hosted by South Dakota Bankers Association
[Click for more information](#)

CONFERENCES

- **2023 Tri-State Trust Conference** | April 25-27, 2023 | Delta Hotel by Marriott, Fargo ND
 - **2023 SDBA/NDBA Annual Convention** | June 4-6, 2023 | Sioux Falls SD
 - **2023 Group Meetings** | September 11-14, 2023
 - **2023 Ag Credit Conference** | Fall 2023 | Bismarck ND
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Just For Fun:

To all of you working from home, I recommend that you check out [Noodles the Pooch](#) for a good laugh!



“Bankers in Action” Stories Sought for SDBA/NDBA Convention

Banks are the cornerstones of communities, giving back in a variety of ways. From volunteer leadership to donating time to charitable causes and supporting organizations through financial gifts, banks succeed when the communities they serve succeed.

As part of the [2023 SDBA/NDBA Annual Convention](#) in Sioux Falls, we will showcase six banks that have found creative ways to meet the needs of their communities and help transform lives. The six selected organizations will have five minutes on the convention agenda on June 6 to share their unique and innovative “Bankers in Action” project, with the goal to inspire colleagues as we answer the question, “Where to Next?”

To nominate a bank for consideration, please complete the form by **February 15** at www.cognitofirms.com/NorthDakotaBankersAssociation/BankersInAction. Banks will be notified of selection status in March. “Bankers in Action” project descriptions may be 250 words max.

We look forward to seeing you June 4-6 in Sioux Falls, SD, to find out, “Where to Next?”

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