NORTH DAKOTA BANKERS ASSOCIATION

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CORRECTION

Question #1: What can be charged on consumer loans in North Dakota, and are there special rules for mortgage loans?

Response: **According to the North Dakota Century Code Chapter 13-04.1, interest charges and other fees must be set at rates as agreed to by the parties, and no agreement between the parties may allow for a money broker to receive finance charges in excess of an annual rate of 36%. Banks and credit unions, however, are exempt from this section.[1]**

Instead, under NDCC 47-14, banks and credit unions must set a rate of 6% per annum unless contracted for in writing. If a different rate is contracted, that rate must not exceed 5.5% higher than the current cost of money on US Treasury bills.[2]

Question #2: Is there any limitation on late charges as it pertains to the loans above?

Response: **A charge for a late payment penalty may be imposed only if the amount of the late charge or the method of calculation of the late charge has been agreed to by the parties in the loan documents that are signed by the borrower.**

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[1] https://ndlegis.gov/cencode/t13c04-1.pdf
[2] https://ndlegis.gov/cencode/t47c14.pdf

Question from the ABA Compliance Hotline

My bank is reviewing policies and procedures and I am wondering if the regulatory requirement that all bank employees in sensitive positions take a two-week consecutive absence might be changing anytime soon? This expectation seems overly restrictive and burdensome.

The reasoning behind this recommendation is that an employee should not have direct or indirect control over their duties for a consecutive period to flush out wrong-doing such as embezzlement. This is, however, more of a recommendation than a requirement and is a basic control that has proven to be an effective internal safeguard in preventing and discovering fraud. The prudential regulators view a sound vacation policy as one element of an institution's overall internal control system. In addition, the FDIC stated that it views such a policy as a benefit to the well-being of the employees and a valuable aid to the institution's overall training program. What many banks do not realize, however, is that an absence from the job does not necessarily mean absence from the bank. Bank employees can be assigned other duties apart from their normal duties but still be allowed to work. According to the New York Federal Reserve; This practice could be implemented through either a requirement that affected employees take vacation or leave, the rotation of assignments in lieu of required vacation, or a combination of both, so the prescribed level of absence is attained. Some institutions, particularly smaller ones, might consider compensating controls such as continuous rotation of assignments in lieu of required absences, so as not to place an undue burden on the institution or its employees."[3]

What is a General Intangible on your Security Agreement?

The typical commercial security agreement form includes a number of boxes for the creditor to mark in order to describe the collateral in which the debtor is granting the bank a security interest. The boxes normally include broad, easily understandable types of collateral such as "inventory," "equipment," and "accounts." However, the boxes also include a residual category of "general intangibles," which is less descriptive and slightly vaguer.

Some forms of personal property, such as goods held in inventory or certain types of equipment, are tangible and easy to consider. Other properties, however, are intangible and may seem ambiguous. Article 9 of the Uniform Commercial Codes generally defines these assets as "general intangibles." Under Article 9, general intangibles are defined to include any form of personal property, including rights recoverable in legal claims, except "accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction." As such, the general intangibles definition is really a catch-all for the types of personal property collateral not covered by the other more recognizable categories.

General intangibles are both valuable and easily missed; they are valuable because they include partnership interests, various forms of licenses, publication rights, and intellectual property such as copyrights and trade names, but they are often missed because of the broad description of "all personal property not otherwise excluded". Thus, many creditors misclassify a type of property or fail to realizer all of the security interests encompassed by a general intangibles definition in an agreement.

[3] https://www.newyorkfed.org/banking/circulars/10923.html

Creditors should therefore be aware of the many different forms of personal property which fall under the broad definition of general intangibles. The following are just some of the items often included as general intangibles:

- An assignment of rights to tax refunds or anticipated tax returns
- Liquor licenses
- Patents and copyrights
- Rights of a franchisee under a franchise agreement, such as trademarks, the trade name, and the goodwill it represented
- Literary rights
- Proceeds of an impending or future lawsuit (except for commercial torts) or settlement
- Commercial fishing and clamming licenses
- Partnership interests in a general or limited partnership and limited liability company membership interests
- Contract rights and rights of performance, including the rights to receive funds in an escrow account
- Rights to collect under an annuity contract

Clearly, the term "general intangibles" is exceptionally broad and covers a wide range of assets. Thus, when a creditor comes across personal property that is difficult to classify, they should consider whether the property may be a general intangible under Article 9. Because perfection by possession may be difficult with said assets, a creditor will likely be required to file a financing statement to perfect their security interest in the asset.

ND DFI Digital Asset Guidance

The North Dakota Department of Financial Institutions released a memo on May 18, 2022, as a response numerous questions regarding digital assets and virtual currency. The memo contains official definitions of important cryptocurrency terms, such as cryptographic key, digital assets, digital currency, and blockchain ledgers. The memo also explains the general authority layout of crypto under North Dakota law, as well as what is required by the national Office of the Comptroller of the Currency. NDCC Sec. 47, otherwise known as "The Uniform Fiduciary Access to Digital Assets Act", is also referenced frequently. This chapter lays out the majority of the state's statutory requirements for fiduciaries dealing with cryptocurrency and virtual currency. Lastly, the memo touches on the effect virtual currency has on a bank's reputation, as well as the risks associated with the Bank Secrecy Act and Anti-Money Laundering laws.[4]

A link to the Department of Financial Institution's memo is attached below:

https://www.nd.gov/dfi/sites/www/files/documents/Regulatory%20Guidance/Digital-Asset-Guidance-05182022.pdf

[4] https://www.ndlegis.gov/cencode/t47c36.pdf

Proposed Federal Stablecoin TRUST Act of 2022

The US Senate has introduced a special bill draft aimed at regulating stablecoins and increasing their transparency and security. The draft is named the Stablecoin Transparency of Reserves and Uniform Sale Transactions Act of 2022, or "The Stablecoins TRUST Act". With this, the US is officially accepting stablecoins as a part of its banking and financial ecosystems, making the United States the first western nation to do so. The TRUST Act aims to regulate stablecoins in order to increase their utility for day-to-day payments. Stablecoins are cryptocurrencies that try to peg their market price to a reserve asset like gold or fiat currencies. They are popular for digital transactions that involve the conversion of virtual assets into real traditional currencies the US Dollar. Tether, USD Coin, and Binance USD are just some of these popular stablecoins that are tied to US fiat currency. As laid forth in the TRUST Act, Stablecoin issuers will have to secure an official license that qualifies them as legitimate financial entities; the issuers can opt for licenses as a Comptroller of the Currency (OCC) or a state money transmitter or other similar licenses. Stablecoin issuers will also have to establish a regular audit system and have a clear structure of asset redemption policies. Detailed specifications on the asset that an issuer's stablecoins will be tied to has also been mandated by the Act.

Additionally, the TRUST Act clarifies that it applies only to dollar-backed stablecoins known as "payment stablecoins". The legislation does not affect non-payment stablecoins, such as stablecoins backed by commodities or virtual currencies. Many US-based cryptocurrency companies issue stablecoins that allow owners to facilitate quick payments, while saving the transaction fee that is usually charged by banks, and with a current market capitalization rate of just over $188 billion, the US government has been looking to regulate these cryptocurrency companies to prevent excessive market fluctuations and stability concerns.[5]

Upcoming NDBA Events - 2022

The North Dakota Banker's Association has many exciting and informational events planned for 2022. Below are some special dates to mark on your calendars –

- **CONFERENCES**
  - **2022 NDBA/SDBA Annual Convention**
    June 14-15, 2022 | Radisson Hotel, Bismarck, ND
    Registration Link
  - **2022 Ag Credit Conference**
    October 5-6, 2022 | Delta Hotel by Marriott, Fargo, ND
- **SCHOOLS**
  - **Dakota School of Banking**
    June 5-10, 2022 | Jamestown, ND | University of Jamestown
    Registration Link
  - **National School for Beginning Ag Bankers**
    June 20-23, 2022 | Spearfish, SD | Black Hills State University
    Registration Link

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[5] https://www.banking.senate.gov/imo/media/doc/the_stablecoin_trust_act.pdf