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## ASK KENNEDY

March 16, 2022

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**Question #1:** When updating signers on an existing business account, are we required to issue an entirely new signature card? For example, ABC Company brings a revised resolution into the bank; we currently print a new signature card requiring “all authorized signers” to sign the new signature card. Instead, is it possible to create an addendum that only requires new authorized signers’ signatures along with an executing signature by an officer of Company ABC?

**Response:** To my knowledge, there is not any specific law or regulation governing this issue. You may want to check your bank’s internal policies and procedures to see whether this is addressed.

My recommendation would be that you ensure it is clear who is currently an authorized signer under the updated resolution. If any of the current signatures on your signature card are from persons who are no longer authorized, I would not recommend continuing to use that card, as it could cause confusion.

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**Question #2:** In North Dakota, are two people who operate a business defined strictly as a partnership, or is there an exception for married couples to operate as a sole partnership?

**Response:** North Dakota has an exception for a “husband and wife.” The North Dakota Secretary of State has provided [business entity descriptions](#), which states the following regarding sole proprietorships:

“Legally, and for tax purposes, the individual owner is the business. A business that is jointly owned by husband and wife who file a joint tax return is generally operated as a sole proprietorship.

The liabilities and profits of a sole proprietorship are personal to the owner. All of the sole proprietor’s personal and business assets are at risk.

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**The sole proprietor has total control of the business. When the owner dies, the business ceases to exist with the assets and liabilities passing to the estate.**

**There are no administrative requirements other than obtaining appropriate licenses and registration of the trade name.”**

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**Question #3:** I have a general question about North Dakota’s Unclaimed Property law as it pertains to automatically renewable certificates of deposit.

Section 47-30.2-04 (201) of the ND statutes provides that a time deposit, including a time deposit that is automatically renewable, is presumed abandoned by the apparent owner five years after the date of maturity of the time deposit or the date of the last indication of interest in the property by the apparent owner, whichever is earlier, provided a time deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner has consented in a record on file with the holder to renewal at or about the time of the renewal. If an apparent owner has another established account with the financial institution and has demonstrated interest in any account under section 47-30.2-12, then all accounts must be considered active.

Section 47-30.2-12(2)(g) is a catchall, providing that an indication of an apparent owner’s interest in property includes “any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.”

Other states explicitly provide that any written correspondence from a bank to the apparent owner is considered to be an indication of an owner’s interest in the time deposit if the correspondence is not returned to the bank for nondelivery and if the bank maintains a record of all such returned correspondence.

Could the mailing of a statement to a customer that is not returned as undeliverable be interpreted to fall under the “any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists”? Do you have any other examples of actions that have been deemed to fall under this catchall category?

**Response:** **The Department of Trust Lands interprets the North Dakota Century Code to require a factual communication from the property owner to the bank. The communication could be a conversation or, if the property owner has several accounts with a bank, it can also include activity on those other accounts, including, but not limited to, online banking.**

## **Cross-Collateralization Clauses in Mortgages Triggering Compliance Issues with Federal Flood Insurance Requirements**

Including a cross-collateralization clause in your mortgage is a great way to ensure that your bank can look to the real property as collateral not only for the referenced note, but any and all current and future indebtedness of the borrower. The problem? The very existence of these clauses in your mortgage may put you in hot water with regulators concerning federal flood insurance requirements.

Under the Flood Disaster Protection Act and related federal regulations, banks are prohibited from making, increasing, renewing or extending loans secured by buildings or mobile homes located or to be located in a special flood hazard area of a community participating in the National Flood Insurance Program (NFIP), UNLESS the real and personal property securing the loan is covered by flood insurance. The flood insurance amount must be at least equal to the lesser of:

1. The outstanding principal balance of the loan(s); or
2. The maximum amount available for the type of structure under the NFIP; or
3. The “insurable value” of the structure.

If you have a cross-collateralization clause, subsequent loans become secured by the real property, and your “outstanding principal balance” will change. This will have an effect on the necessary flood insurance amount. Thus, if you have a cross-collateralization clause and advance a new loan, there is a chance that your loan(s) will not be covered by adequate flood insurance and you will be in violation of the flood insurance requirements.

To remedy this issue, it is suggested you work with counsel to craft limiting language for cross-collateralization clauses.

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## **E-Sign Modernization Act of 2022 (S. 3715)**

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) ([15 U.S.C. §§ 7001 et seq.](#)) was passed by Congress in 2000. In part, the E-Sign Act allows banks to issue electronic records to a consumer after providing a disclosure and obtaining the consumer’s consent. The “reasonable demonstration” requirement requires that consent be given “in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.”

The E-Sign Modernization Act of 2022 ([S. 3715](#)) was introduced in the Senate on March 1, 2022, and would amend the current E-Sign Act to remove the “reasonable demonstration” requirement to provide for a more streamlined consent process.

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### Cybersecurity – New Rule

Attached is a [document on cybersecurity](#) prepared by Tracy Kennedy for the 2022 NDBA/SDBA Bank Management Conference.

As seen in the document, the new Computer-Security Incident Notification Final Rule requires banks to notify the FDIC as soon as possible and no later than 36 hours after the bank determines that a significant security breach has occurred. Full compliance is required by May 1, 2022.

The [FDIC Cybersecurity Awareness Technical Assistance Video Series](#) released by the FDIC is an additional resource for banks concerning cybersecurity.

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### 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 Tri-State Trust Conference**  
April 26-28, 2022 | Delta Hotel by Marriott, Fargo, ND  
Sponsor/Exhibitor Registration Form available [here](#).
- **2022 NDBA/SDBA Annual Convention**  
June 14-15, 2022 | Radisson Hotel, Bismarck, ND  
More information to come.
- **2022 Ag Credit Conference**  
October 5-6, 2022 | Delta Hotel by Marriott, Fargo, ND

- **SCHOOLS**

- **Dakota School of Lending Principles**  
Hosted by South Dakota Bankers Association  
March 29-April 1, 2022 | Best Western Ramkota Hotel, Aberdeen, SD
  - **Dakota School of Banking**  
June 5-10, 2022 | Jamestown, ND | University of Jamestown
  - **National School for Experienced Ag Bankers**  
June 20-23, 2022 | Spearfish, SD | Black Hills State University
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## **March is Women's History Month Significance of Women in the Financial Market**

In honor of Women's History Month, we are discussing the significance of women in the financial market.

- In the United States, consumer spending accounts for 70% of economic activity,<sup>1</sup> and women make 85% of all consumer purchases and drive 70-80% of spending among consumers.<sup>2</sup>
- Women live 6-9 years longer than men.
- Women make up the majority of persons with a bachelor's degree (56% women vs. 44% men) and master's degree and higher (53% of women vs. 47% men).<sup>3</sup>
- Two thirds of the Wall Street Journal's regular readership is male (67%), while one third is female (33%).<sup>4</sup>
- In 2016, women, on average, had 30% less in their savings accounts than men; and less savings in their retirement accounts.<sup>5</sup>
- Women with any level of education are less comfortable making investment decisions than men and, on average, women have lower levels of financial literacy.<sup>6</sup>

As you can see, although women account for most consumer spending in the United States, hold more degrees than men, and live longer than men, they have disproportionate knowledge and ownership when it comes to savings and investments. With the strong correlation between college completion and lifetime earnings and wealth accumulation,<sup>7</sup> it is important for women to increase their financial literacy. It is crucial for businesses, including banks, to acknowledge this need when assessing their customers and the services they need.

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### **2022 Washington D.C.**

Tracy will discuss NDBA's March 2022 trip to Washington D.C.

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<sup>1</sup> <https://www.marketplace.org/2020/04/06/whats-gonna-happen-to-the-consumer-economy/>

<sup>2</sup> <https://www.lexingtonlaw.com/blog/finance/women-spending-habits.html>

<sup>3</sup> <https://educationdata.org/education-attainment-statistics#:~:text=The%20gender%20gap%20increased%20from,old%20favored%20men%20by%2073%25.>

<sup>4</sup> [https://www.pewresearch.org/politics/2010/09/12/section-4-who-is-listening-watching-reading-and-why/#:~:text=Two%20thirds%20of%20the%20Wall,third%20is%20female%20\(33%25\).](https://www.pewresearch.org/politics/2010/09/12/section-4-who-is-listening-watching-reading-and-why/#:~:text=Two%20thirds%20of%20the%20Wall,third%20is%20female%20(33%25).)

<sup>5</sup> <https://www.magnifymoney.com/blog/banking/savings-by-gender/>

<sup>6</sup> Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020, *available at* <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

<sup>7</sup> <https://www.pewresearch.org/fact-tank/2021/11/08/whats-behind-the-growing-gap-between-men-and-women-in-college-completion/>

# CYBERSECURITY

## WHY BANKS NEED CYBERSECURITY POLICIES AND PROCEDURES

### INTRODUCTION

Government and regulatory officials are citing cybersecurity as one of the most pressing issues that banks must address. Cyber incidents can have financial, operational, legal, and reputational impact. As a result, cybersecurity should be a priority for bank management, directors, and legal counsel.

### FEDERAL LAWS AND REGULATIONS

#### Gramm-Leach-Bliley Act (GLBA)

GLBA requires banks to protect the security and confidentiality of customers' nonpublic personal information. In furtherance of this policy, the GLBA directs federal banking regulators to establish information security standards for banks relating to administrative, technical, and physical safeguards in order to:

- Ensure the security and confidentiality of customer records and information;
- Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- Protect against unauthorized access to or use of such customer records or information that could result in substantial harm or inconvenience to any customer.

#### Interagency Guidelines Establishing Information Security Standards (Security Guidelines)

GLBA has been implemented through the Security Guidelines, which require banks to:

- Develop and maintain a written customer information security program that allows the bank to identify, assess, manage, and control risks that could result in the unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems
- Manage service providers to ensure that they also follow the Security Guidelines

#### Cybersecurity Information Sharing Act of 2015 (CISA)

Authorizes private companies to monitor and implement defensive measures on their own information systems to counter cyber threats and provides certain protections to encourage companies to voluntarily share information about cyber threat indicators and defensive measures with the government and other private companies.

#### Executive Order 13691 Promoting Private Sector Cybersecurity Information Sharing

Lays out a framework for expanded information sharing among private companies, and between private companies and the federal government, in order to identify quickly and protect against cyber threats facing the U.S. Encourages the formation of information sharing and analysis organizations, such as the Financial Services Information Sharing and Analysis Center (FS-ISAC), which is specifically for the banking sector.

#### [New] Computer-Security Incident Notification Final Rule

The rule requires banks to notify the FDIC as soon as possible and no later than 36 hours after the bank determines that a significant security breach has occurred. Effective date April 1, 2022 (full compliance extended to May 1, 2022).

### INCORPORATING CYBERSECURITY INTO THE INFORMATION SECURITY PROGRAM

Banks are required to develop information security programs. Several of the components of the traditional information security program should be enhanced to address cybersecurity risks.

#### Cybersecurity Threat and Vulnerability Monitoring and Sharing / Threat Intelligence

Bank management is expected to monitor and maintain sufficient awareness of cybersecurity threats and vulnerability information in order to evaluate risk and respond accordingly. Bank management should also establish procedures to evaluate and apply the various types and quantity of cyber threat and vulnerability information to meet the needs of the bank. The FFIEC recommends that all banks participate in the FS-ISAC to share information, monitor cyber threats and vulnerabilities and to enhance their risk management and internal controls.

#### Security Awareness Training

Banks should have cybersecurity awareness programs educating employees, contractors, and customers about cybersecurity threats and encouraging them to "Think Before You Click." Training should be enterprise-wide and role-specific.

#### Service Providers / Third-Party Management

Outsourcing IT-related functions to third-party service providers does not change the regulatory expectations for an effective information security program. Banks have a responsibility to conduct due diligence, ensure that contracts set out the expectations of the service provider to maintain security in accordance with the bank's standards, and conduct ongoing oversight and monitoring.

#### Response Program

Banks must develop and implement a response program designed to address incidents of unauthorized access to sensitive customer information. In part, it should contain procedures for notifying customers and regulators in accordance with the Security Guidelines.

#### Business Continuity and Cyber-Resilience

Bank management is expected to maintain sufficient business continuity planning processes to ensure the rapid recovery, resumption, and maintenance of the bank's operations after a cyber attack.

#### Other Tools & Resources

- **FFIEC Free Cybersecurity Assessment Tool**  
<https://www.ffiec.gov/cyberassessmenttool.htm>
- **FFIEC Information Technology Examination Handbook**  
<https://ithandbook.ffiec.gov>
- **National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity**  
<https://www.nist.gov/system/files/documents/cyberframework/cybersecurity-framework-021214.pdf>