NDBA Live

September 2, 2026

Topics Covered:

- Special Guest: Jamie Nelson | President & CEO, TruCommunity Bank | NDBA Chair
- Member Questions
- Treasury Proposes Regulations Implementing the GENIUS Act
- Take It To The Board Room: Bank Share Buy-Sell Agreements
- Upcoming Events

Special Guest: Jamie Nelson | President & CEO, TruCommunity Bank | NDBA Chair

Please welcome our guest, Jamie Nelson! Jamie is the President & CEO of TruCommunity Bank and Chair of the North Dakota Bankers Association. A lifelong community banker, she will share her journey in banking, and discuss her role with NDBA and priorities and goals during her term as Chair.

Member Questions

Question 1: I have a question in regard to CD Interest being paid out by check after a customer passes. How should these be handled when a customer passes. Should they still be paid out to the customer themselves or handled differently. We know we can't hold interest payments at all, but not sure if this were to happen what we should do. Especially if they are the only owner on them with PODs.

Response: **Your question as I understand it is about CD's that have perhaps matured and pay out interest on a monthly basis.**

All CD's are considered "Accounts" under the Definitions of 30.1-31-02, in the North Dakota Century Code and specifically subsection (1) and should be treated the same way you would treat any other POD deposit account.

I do want to draw your attention to Chapter 30.1-31 of the North Dakota Century Code, because it is a Uniform Law and does a great job of providing direction to banks "Financial institutions" dealing with POD designations on all kinds of accounts, checking, savings and certificates of deposit.

It is my interpretation that upon death of a single party account holder with a POD designation the account belongs to the POD with all of the rights and liabilities of an account holder and subject to responsibilities of Chapter 30.1-31.

Question 2a: How would it best be handled for when/if when an insurance agency accepts checks written out to the agency themselves or to the underwriting company and deposits them at the bank in the agencies name? For example, ABC Agency has an account at bank and checks are written out to Progressive Insurance let's say. I believe most agencies then deposit the check(s) and pay the underwriters themselves as a convenience to their customers. If this presents some risks, what can we do to mitigate this? Are there ND laws to consider? What are other banks doing?

Response: **My concern is that the Agency depositing the checks without "progressive's" endorsement might violate presentment and transfer warranties under Articles 3 and 4 of the Uniform Commercial Code but I also wonder if the Insurance Agency's agreement with the insurance companies contain a limited power of attorney that would allow the Agency to deposit checks on its behalf.**

Question 2b: I just wanted to follow up on this to say we asked our own insurance agency and they said typically most insurance companies have an agreement with the limited POA from their underwriting companies to deposit the checks. However, we as a bank would not have that agreement or the changes that happen within to a limited POA. Especially as some companies no longer allow this and in that case they must ACH the payment or take a credit card payment. As helpful as it is for the insurance agencies, it leaves liability open for us/the bank so hopefully that practice changes.

Response: **I agree with you that if the Bank does not have a written limited POA its just not a good idea to continue the practice.**

Question 3: We received a garnishment today via the mail we have a few questions that we're hoping you'll be able to suggest some guidance on. There are two listed Defendants 'x AND x' (husband and wife) however in the body of the garnishment the verbiage only lists the wife. Our internal issue is while they do have a joint account, he also has his own account she is not listed on. We are trying to determine if we need to return the garnishment and get the verbiage updated where both are listed in the body of the garnishment OR if we just garnish her as she is the only party listed in the body.

Response: **The garnishment is effective on the date the Bank was served if it was served properly. To be sure you may want to place a hold on the account until you've had a chance to review the Garnishment and make your determinations on how to proceed.**

32-09.1-08. Service.

1. **The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal.**
2. **Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.**

If Service was made as described above, then you can proceed to reference your bank's Deposit Account Agreement to determine the rights and obligations of the owners of the account. Generally, they would have joint and several ownership and the garnishment of one individual might affect the rights of the other owner.

The thing I'm not so sure about is if there was proper Service of the Garnishment. Generally a summons must be hand delivered and / served by Certified Mail specifically addressed to your bank's president, vice president or registered agent. This is where a lot of service of bank Garnishments fall short.

Question 4a: I am reaching out as we have a potential customer or two that are looking at buying bred cows from Western Nebraska or Wyoming. With the drought conditions in those states many ranchers are selling larger portions of their herd since they don't have enough grass to feed them. The FSA has a first lien on livestock and will not subordinate. We would have to take a PMSI on the purchased cattle. My understanding is we will need to send notification to the FSA via certified mail within 6 months before taking possession of the cattle and we need an executed security agreement prior to the purchase occurring. How descriptive does the notification to prior lienholders need to be? Would a letter stating we are looking at financing 75-85 head of bred cows be sufficient, or would we need to wait until the exact #, breed, and tags/other identifying information is available? Additionally, when filing the UCC/CNS, how descriptive do we need to be? When I look at receipts provided by other customers, they certainly have limited information (see below). In a perfect world, I could cite quantity, breed, and ear tag numbers, but could get messy with multiple breeds and non-continuous ear tags. Since they would be moving across state lines, I believe they are required to have RFID tags. Tag numbers could also be changed after the buyer takes possession. The borrower will likely have their cattle comingled with another individuals cattle as well. I recognize that regardless of how we file our UCC/CNS, there will be additional risks that likely cannot be mitigated but just want to make sure we are taking care of the things we can control. As always, thank you for your time and advice!

Response: **Thank you for your great question. You are right that PMSI's in livestock and inventory require prior notice to all lienholders of record prior to the borrower/debtor acquiring the livestock. You are also correct that generally speaking PMSI does require tracing to the collateral obtained with your bank's funds. The applicable North Dakota Statute is below:**

41-09-44 (9-324)

4. Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 41-09-47, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- **a. The purchase-money security interest is perfected when the debtor receives possession of the livestock;**
- **b. The purchase-money secured party sends a signed notification to the holder of the conflicting security interest;**
- **c. The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and**
- **d. The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.**

PMSI require tracing of the "collateral" that was acquired with your bank's loan funds and the above just mentions a description of the livestock. I don't think that description has to include ear tag numbers.

You might want to reach out to the FSA after you send the Notice to see if they have an Intercreditor Agreement that they prefer to use.

Don't forget to file CNS statements in all states where the cattle may be taken.

And you may want to require that your borrower/debtor provide accurate cattle counts and tracing the cattle purchased by your bank.

I do not suggest limiting your Security Agreement or the UCC-1 / CNS description of livestock to a specific number of cattle as you would have every right to a second position on the existing cattle and shouldn't waive that right.

Question 4b: Thank you for the information. To clarify, our UCC/CNS can be vague and just state livestock as long as we are able to trace the collateral internally? For example, have prior ranchers' brand or tag numbers in the loan file? Or does the UCC/CNS filing need to be traceable? Or are we best filing two UCC/CNS? One standard blanket filing and the other explicitly identifying the cattle?

Response: **The CNS element requires more of a description than the UCC-1.**

You will need at minimum the following:

1. **County where the cattle will be raised**
2. **A description of the cattle – I don't however think that ND requires the ear tags. That's not to say that other states' CNS might require it.**
3. **Year that the cattle are grown or growing**
4. **Quantity is required for all CNS**
5. **A further description is helpful – other states might require Brands but I'm not aware of other states requiring tag numbers.**

The Code of Federal Regulations sets forth the minimum information. See the highlighted section below but note, whether you are just taking a security interest in only the PMSI cattle or all of the Cattle. I suggest that you take a security interest in all of the cattle despite the fact that your bank may be in a second priority to other creditors for the Non-PMSI portion.

9 CFR § 205.103 EFS—minimum information.

(a) The minimum information necessary on an EFS is as follows:

(1) Crop year *unless* every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;

(2) Farm product name (see §§ 205.106, 205.206);

(3) Each county or parish in the same State where the farm product is produced or located;

(4) Name and address of each person subjecting the farm product to the security interest, whether or not a debtor (see § 205.102);

(5) Social security number or other approved unique identifier or, if other than a natural person, IRS taxpayer identification number or other approved unique identifier of each such person;

(6) Further details of the farm product subject to the security interest *if needed* to distinguish it from other such product owned by the same person or persons but not subject to the particular security interest (see § 205.207); and

(7) Secured party name and address.

(b) A requirement of additional information on an EFS is discretionary with the State.

(c) Whether to permit one EFS to reflect multiple products, or products in multiple counties, is discretionary with the State.

For the UCC-1 collateral description I would generally encourage you to list all "livestock, including but not limited to (your cattle description here) growing or to be grown, products and proceeds thereof". In addition to listing all other types of collateral, like "general intangibles, including but not limited to government payments, accounts, equipment etc.….".

Treasury Proposes Regulations Implementing the GENIUS Act

The Department of the Treasury (Treasury) has published a notice of proposed rulemaking to implement Section 3 of the GENIUS Act, which governs the issuance, offer, sale and availability of payment stablecoins in the United States. Section 3 prohibits a digital asset provider from: (1) offering or selling a payment stablecoin to a person in the United States unless the payment stablecoin is issued by a permitted payment stablecoin issuer, and (2) offering, selling, or otherwise making available in the United States a payment stablecoin issued by a foreign payment stablecoin issuer unless the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to 12 U.S.C. § 5916.

In summary, the NPRM:

- Defines key terms (including "issue," "offer," "sell," "permitted payment stablecoin issuer," "foreign payment stablecoin issuer," and "digital asset service provider") and clarifies that a payment stablecoin issuer may separately qualify as a digital asset service provider;
- Provides that a payment stablecoin is considered to be issued in the United States when the issuer is located in the United States at the time of issuance or when the person being issued the payment stablecoin is located in the United States;
- Implements and clarifies the prohibitions on digital asset service providers; and
- Establishes exemptions and safe harbors from the general prohibitions of Section 3.

In the NPRM, the Treasury indicated it is not basing the rules on federal securities laws because the GENIUS Act expressly provides that payment stablecoins are not securities or commodities. Treasury explained that payment stablecoins are designed to be used as a means of payment or settlement and are expected to maintain a stable value, distinguishing them from financial instruments designed primarily for investment and capital appreciation.

Treasury is requesting public comment on the proposed regulations, with comments due October 19, 2026.

Take It To The Board Room: Bank Share Buy-Sell Agreements

Regulation Y, which implements provisions of the Bank Holding Company Act (the Act), defines the term "company" as "any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust." 12 C.F.R. § 225.2(d)(1).

The Federal Reserve has applied this definition to shareholder arrangements involving bank shares. In its Regulation Y Frequently Asked Questions (FAQs), the Federal Reserve addresses when a voting trust, buy-sell agreement, or similar shareholder agreement will not be considered a "company" under the Act. The FAQ provides that such an agreement generally will not be considered a "company" if, in relevant part, it terminates within 25 years:

> **Q2: Section 2 of the BHC Act defines "company" generally to include any "corporation, partnership, business trust, association, or similar organization." Under what circumstances would a voting trust, buy-sell agreement, or other similar agreement among shareholders in a bank holding company not constitute a "company" under the BHC Act?**
>
> **A2:** A voting trust, buy-sell agreement, or other similar agreement among shareholders in a bank holding company will generally not be a company under section 2 of the BHC Act if the trust or agreement: (i) relates only to the shares of a single bank; (ii) terminates within 25 years; (iii) involves parties who are not participants in any similar voting trust or agreement with respect to any other bank or nonbank business; and (iv) in the case of a voting trust, engages in no other activity except to hold and vote the shares of a single bank.

Accordingly, it is important to keep in mind this 25-year limitation when drafting and reviewing bank shareholder buy-sell agreements. A buy-sell agreement that is indefinite or does not require termination within 25 years may not satisfy the conditions for the Federal Reserve to treat the agreement as outside the definition of "company" under the Act. Banks and bank holding companies should review existing buy-sell agreements to determine whether they contain a termination provision that satisfied the 25-year limitation and should consider the limitation when drafting or amending these agreements.

Special thanks to John Schroeder of the Dakota Law Group for providing information and insight for this article.

Upcoming Events

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

- **2026 Regional Member Meetings |** September 14-17, 2026 | Grand Forks, Fargo, Washburn and Minot | Link
- **NDBA Ag Credit Conference |** October 1-2, 2026 | Hilton Garden Inn, Fargo
- **2026 NDBA Peer Group Consortium |** October 13-14, 2026 | Bismarck | Link

- **2026 NDBA Fall IRA Seminars |** Link
  - **IRA Fundamentals |** October 26, 2026 | Holiday Inn, Bismarck
  - **IRA Advanced |** October 27, 2026 | Holiday Inn, Bismarck
  - **IRA Fundamentals |** October 28, 2026 | Holiday Inn, Fargo
  - **IRA Advanced |** October 29, 2026 | Holiday Inn, Fargo
- **Health Savings Account Seminar** | October 30, 2026 | Holiday Inn of Fargo
- **Bank Management Conference & Legislative Reception |** January 2027 | Bismarck
- **2027 Tri-State Trust Conference |** April 2027 | Fargo
- **2027 SDBA/NDBA Annual Convention |** June 6-8, 2027 | Sioux Falls, SD