

2021 NDBA
Ag Credit Conference

October 7-8 • Ramkota Hotel • Bismarck ND



NORTH DAKOTA
BANKERS
ASSOCIATION

2021 NDBA Ag Credit Conference

Thursday, October 7

- 7:45–8:30 am Registration and Continental Breakfast
- 8:30–8:35 am Welcome by Emcee Dan Michaels
- 8:35–9:35 am Your Bank's Role in Creating the Total Town Makeover | *Andrew McCrea, Maysville MO*
- 9:45–10:30 am Breakout Session I
- ◆ How the Developing World Will Affect US Agriculture | *Andrew McCrea*
 - ◆ Transitory, My Nose | *Tommy Grisafi, Advance Trading*
 - ◆ Cattle as Collateral and Crop Marketing | *Tracy Kennedy, Zimney Foster*
 - ◆ *Prerecorded* Chapter 12 Ag Bankruptcy | *John Schroeder, Zimney Foster*
- 10:40–11:25 am Breakout Session II
- ◆ Farm Inputs: Supply, Demand and Concerns | *Bridgette Readel, Corteva*
 - ◆ Weather Update for Production Agriculture | *Daryl Ritchison, NDAWN*
 - ◆ Ag Security Agreements and Mortgages | *Tracy Kennedy, Zimney Foster*
 - ◆ *Prerecorded* Foreclosure/Ag Workout Agreements | *John Schroeder, Zimney Foster*
- 11:30 am–12:25 pm Fail Proof: Become the Unstoppable You! | *Alex Weber, Denver CO*

Unique Conference Experience! An Afternoon at Black Leg Ranch

- 12:30 pm Buses to Black Leg Ranch with box lunch
- 1:30–2:15 pm Black Leg Ranch: A Story of Diversification and Agritourism Based on Profitability and Lifestyle
Jay Doan, Black Leg Ranch, McKenzie ND
- 2:15–3:45 pm Federal, State and Local Agricultural Updates
- ◆ Ed Elfmann, American Bankers Association, Washington DC
 - ◆ Doug Goehring, ND Agriculture Commissioner
 - ◆ Bank of North Dakota Update
- 3:45–6:00 pm Tours, Social and Dinner at Black Leg Ranch
- 5:15 & 5:45 pm Buses depart to return to Ramkota Hotel



Friday, October 8

- 7:00–7:45 am Buffet Breakfast
- 7:45–8:40 am Market Report on Land and Machinery
Scott Steffes, Steffes Group, Fargo ND
- 8:40–8:50 am Break
- 8:50–9:40 am NDSU Experts: Breakout Sessions
- ◆ Carbon and Conservation | *David Ripplinger*
 - ◆ Ag Marketing | *Frayne Olson*
 - ◆ Farm Stress | *Sean Brotherson*
- 9:45–10:25 am Legislative and Agriculture Update
Tracy Kennedy, Zimney Foster, Grand Forks ND
- 10:30–11:25 am A Look at Today's Agriculture Markets
Delaney Howell, Ag News Daily, Des Moines IA
- 11:30 am Wrap up and Adjourn

SPONSORS:



Conference EMCEE

Dan Michaels
Fargo ND

"Extraordinary Leadership for North Dakota Banks"

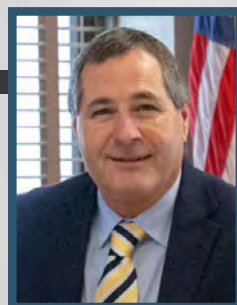
2021 NDBA Ag Credit Conference Featured Speakers

Ed Elfmann



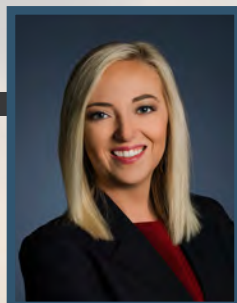
Ed Elfmann is SVP of agricultural and rural banking policy for the American Bankers Association. He also works on swaps and derivatives policy, financial services, and appropriations. Elfmann serves on the Chicago Mercantile Exchange's Agricultural Markets Advisory Committee and the Commodity Futures Trading Commission's Agricultural Advisory Committee. A central Minnesota native, Elfmann grew up on a dairy farm.

Doug Goehring



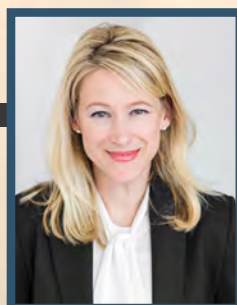
Doug Goehring has been North Dakota Agriculture Commissioner since 2009. A third-generation farmer, Commissioner Goehring, along with his son, Dustin, operates a 2,000-acre, no-till farm near Menoken in south central North Dakota. In addition, the Goehring's have a feeder cattle operation.

Delaney Howell



Delaney Howell strives to bring the most up-to-date information on the latest news cycle in DC politics, commodity markets, and the international agricultural scene. She grew up on a grain and livestock farm in Southeast Iowa and served as the first female host of Market to Market. Delaney holds a Bachelor's degree in agricultural sciences from Northwest Missouri State University and a Master's in agricultural communications through Texas Tech University.

Tracy Kennedy



Tracy Kennedy is a principal shareholder at Zimney Foster P.C. in Grand Forks and counsel for the North Dakota Bankers Association. She has more than 20 years of experience in banking law, commercial and business law, creditors' rights and agricultural lending and credit transactions. Kennedy earned a B.A. Degree from Minot State University and obtained her J.D. Degree from the University of North Dakota School of Law.

Andrew McCrea



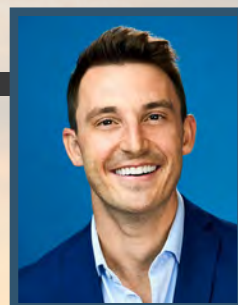
Andrew McCrea's uniqueness lies in the broad background his life encompasses. Since 1996, he has traveled the nation producing "American Countryside" features heard each day on radio stations coast-to-coast. He also continues to manage and work on his family's 3500-acre ranch in northwest Missouri, McCrea Family Farms. Andrew's presentations inspire leadership at every level through his blend of humor and real-life strategies for living life with purpose.

Scott Steffes



Scott Steffes is president of Steffes Group and holds many titles, degrees, and awards. He is a past recipient of the International Auctioneer Championship (IAC), North Dakota Auctioneer Championship, and Minnesota Auctioneer Championship.

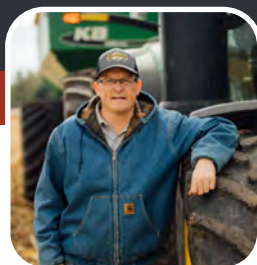
Alex Weber



Alex Weber is a speaker, entertainer, and American Ninja Warrior who also knows what it's like to hit setbacks – and overcome them. It's Alex's sincere understanding of peak performance and peak challenges, mixed with unforgettable stories and actionable strategies that makes him connect so well with audiences. Alex knows what it takes to summon the best of ourselves in the moments we need it most.


“Your Bank’s Role in Creating the Total Town Makeover”

Andrew McCrea, Maysville MO



Your Bank's Role in Creating the Total Town Makeover

Moving People & Places From Ordinary to Extraordinary




1

Why?

Vs.

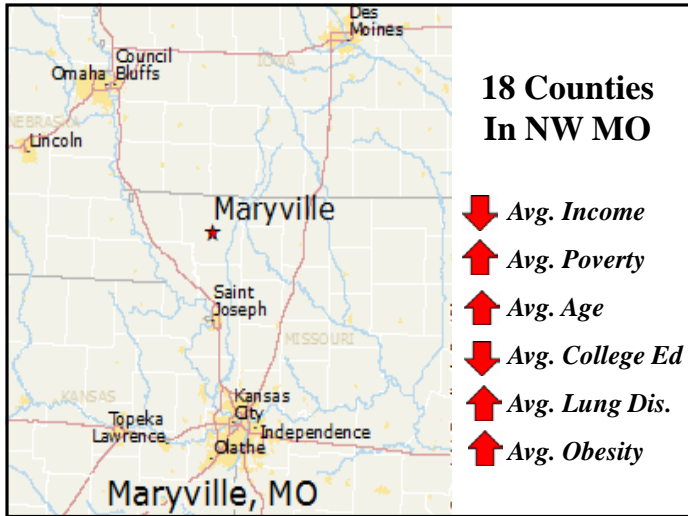
Why Not?



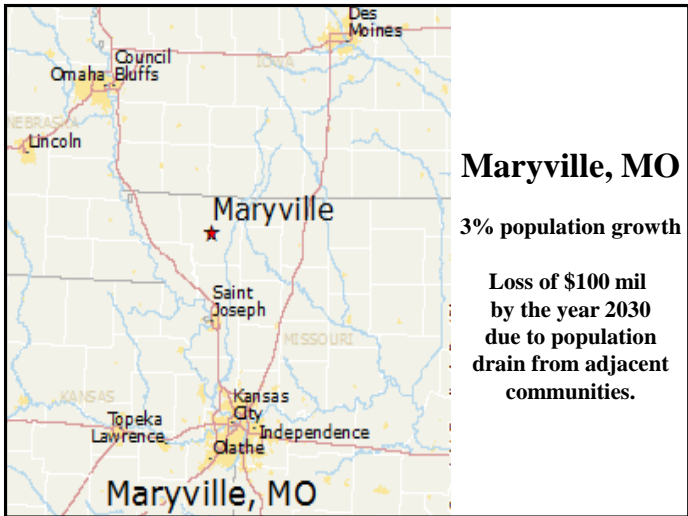
2



3




4



5

What's Your Role?

What's the Bank's Role?



6

*How Do Communities/
Counties Do this?*



7



*What Makes Your
Community Uniquely Special?*

*What Do People Routinely Go
Somewhere Else to Purchase/Find?*



8



Grassroots Arts in Lucas, KS (pop 394)

9



Calico Rock Museum Board, Calico Rock AR (pop 1545)

10



Calico Rock Museum Board, Calico Rock AR (pop 1545)

11



Water Valley, MS (pop 3362)

12



13



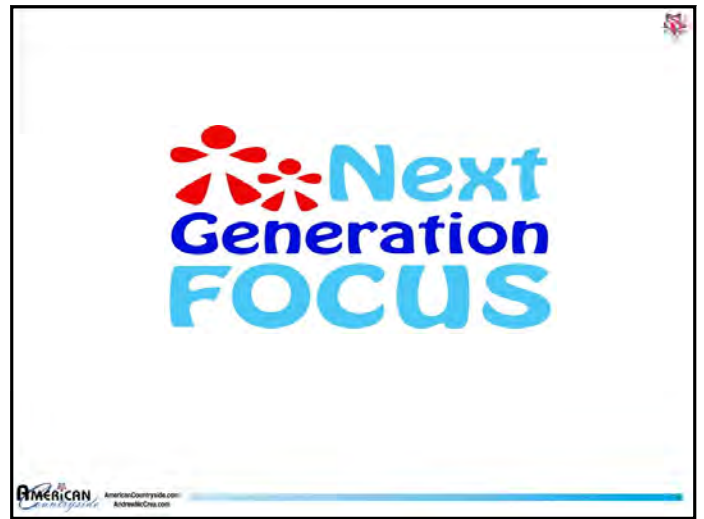
Shickley, NE (pop 341)

14

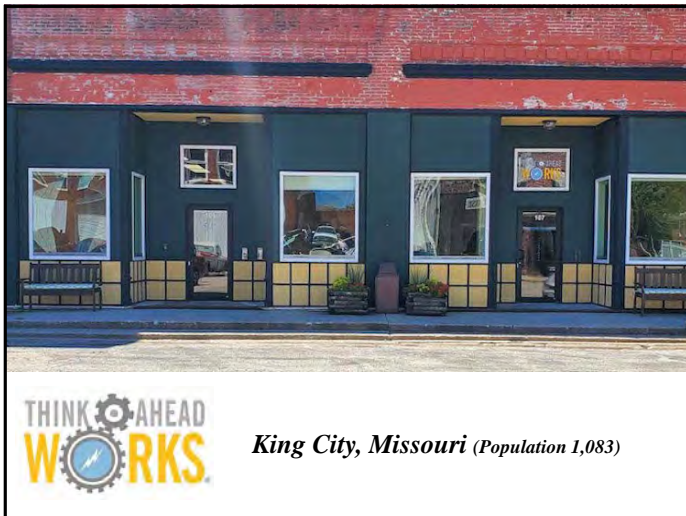


*Cedar River Complex
Osage, IA (pop 3624)*

15



16



17



18



Shickley, NE (pop 341)

19

David Waltemath Memorial – Endowment Fund

Endowment Key Points

- You never start at “0”
- Seek out a Range of Talents
- Leverage Your Dollars
- Share the Message, Be Amazed

20



State Bank of Faribault (MN)

21



Carson Bank – Mulvane, KS

22

AMERICAN
Countryside

Follow “Total Town Makeover”
“American Countryside” and
“Farming the Countryside” on Facebook

FarmingTheCountryside.com
TotalTownMakeover.com
AndrewMcCrea.com
AmericanCountryside.com

andrew@andrewmccrea.com

Find us on
Free Apps

Agri & Talk

Nationwide Satellite
Coverage on XM147
at 1:55PM Central

23

ANDREW MCCREA

THE
**TOTAL TOWN
MAKEOVER**

RETHINKING BUSINESS,
COMMUNITY, AND HOME
IN SMALL TOWN AMERICA

TheTotalTownMakeover.com

Click on the “Resources”
tab to find success stories
from other communities

Andrew McCrea
AndrewMcCrea.com
TotalTownMakeover.com
andrew@andrewmccrea.com

24



NORTH DAKOTA
BANKERS
ASSOCIATION

Lined area for notes, featuring horizontal lines over a background image of a tractor and plow in a field.



NORTH DAKOTA
Bankers
ASSOCIATION

A series of horizontal lines for taking notes, overlaid on a faded background image of a tractor in a field.

2021 NDBA AG CREDIT CONFERENCE
**CATTLE AS COLLATERAL
AND CROP MARKETING**

Breakout Session I
9:50-10:35 a.m.
Thursday, October 7, 2021

Presented By:

Tracy A. Kennedy

Attorney at Zimney Foster P.C. and General Counsel for the North Dakota Bankers Association

Prepared By:

Tracy A. Kennedy, John D. Schroeder, and Jocelyn A. Dravitz

Attorneys at Zimney Foster P.C.

Copyright © 2021. All rights reserved.

These materials provide general information and are intended for educational purposes only. Nothing in this program, the program materials, or communications stemming from the program (including questions and answers) should be considered as the rendering of legal advice or as creating an attorney-client relationship between any program attendees/readers and the presenters/authors. Persons having a need for legal advice should engage the services of a licensed attorney in all legal matters. Presentation attendees/readers should assure themselves that these materials are current and applicable at the time they are reviewed or considered. The presenters/authors do not warrant that these materials will continue to be accurate because laws and interpretation of laws evolve and change over time, nor do they warrant them to be completely free of errors when delivered/published. Presentation participants/readers should verify statements before relying on them.

1. ATTACHING YOUR INTEREST TO LIVESTOCK

A security interest attaches to collateral when: (1) value has been given; (2) *the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party*; and (3) the debtor has signed a *security agreement which contains a description of collateral*.

“RIGHTS IN THE COLLATERAL”

As seen above, one of the requirements for attachment is that the **debtor** have **rights in the collateral or the power to transfer rights in the collateral**. The phrase “**rights in the collateral**” is not defined by the UCC. Nonetheless, it is well-settled that “rights in the collateral” may be an interest less than outright ownership. Mere possession of the collateral by the debtor is not enough to grant sufficient rights for the security interest to attach (nor is it required). Courts will still consider the extent of the debtor’s *control* over the property to determine if a security interest will attach to the collateral.



Feedlots or Cattle Share Agreements Can Give a Third Party “Rights in the Collateral” Sufficient to Grant the Third Party’s Lender a Security Interest in Your Collateral

One issue banks should be aware of is feedlot agreements and cattle share arrangements where the farmer places livestock with a third party. Several South Dakota cases have said that the third party may have sufficient rights in the livestock collateral to pledge it to another lender. The focus is on the outward appearance of the *debtor’s* rights of ownership and control in the collateral. Factors looked at include:

- The parties’ intent (*e.g.*, whether the agreement itself identifies the farmer as the owner).
- Whether the actual owner of the collateral authorizes the debtor to create a security interest.
- Whether the owner allows another to appear as the owner or dispose of the collateral, such that a third party is led into dealing with the apparent owner as though he were the actual owner.
- Which party’s brand is on the livestock.
- Who provides land, facilities, equipment and feed.
- Who makes decisions relative to culling, selling and care of the livestock.

DESCRIBING COLLATERAL: ARE COWS INVENTORY OR FARM PRODUCTS?

Inventory

Inventory is goods, other than farm products, that are leased by a person as lessor or held by a person for sale or lease or to be furnished under a service contract, raw materials and work in process, and goods consumed in a business.

Note below that for something to be a “farm product,” the debtor must be engaged in a farming operation with respect to the goods. Thus, if livestock is held by someone not engaged in farming,

it may be considered inventory. Livestock may also be considered inventory in other scenarios, depending on how they are used (*i.e.*, held for sale or lease).¹ ***You can avoid the whole issue simply by including both categories of collateral in your Security Agreement!***

Farm Products

The UCC recognizes “Farm Products” as a category of collateral, described as follows:

Goods that are not standing timber, are subject to an agricultural lien, or are crops (including trees, vines, bushes, aquatic goods), livestock (born or unborn; includes aquatic goods), supplies used or produced in a farming operation, or products of crops or livestock in their unmanufactured states. N.D.C.C. § 41-09-02(1)(jj). For the crops, livestock, supplies or products to be “farm products,” the debtor must be engaged in a farming operation with respect to the goods. A farming operation means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

N.D.C.C. § 41-09-02(1)(kk).



Include Proceeds for Cattle Already Sold

You want your security interest to continue in any proceeds of the original collateral. For instance, if the cattle gets sold, your security interest continues in the proceeds checks.

2. PERFECTING AND PROTECTING YOUR INTEREST IN CROPS AND LIVESTOCK

UCC-1 FINANCING STATEMENT AND CNS

To protect your interest in pledged personal property as against other lien holders, purchasers, and bankruptcy trustees, you must “perfect” your security interest. Security interests in inventory, farm products and general intangibles can all be perfected by filing a UCC-1 Financing Statement.

When dealing with farm products, you must also file in the Central Notice System (CNS) if you want to get your bank’s name as a payee on a check for crop or livestock purchases. Your CNS must include a reasonable description of the property, including the county in which the property is located. Your name and information will then appear on a list distributed by the Secretary of State, which will allow you to impose liability for the security interest against a crop or livestock buyer if needed. N.D.C.C. §§ 41-09-40(6); 54-09-10.

¹ See *In re Brower*, 104 B.R. 226, 233 (Bankr. D.N.D. 1988) (stating that livestock is inventory when placed by a farm debtor into the hands of a marketing agent for sale, or when the farm debtor purchases the livestock with the intent to immediately resell them as part of his secondary business as a cattle trader).

Purposes of Each

The UCC-1 and CNS serve very different purposes. The UCC-1 perfects the bank's security interest and its priority position, while the CNS protects buyers when they purchase farm products. Such buyers can use the CNS to receive information about outstanding liens against farm products that they buy. This information tells the buyer *whether they should put the bank's name as payee on the check for crop or livestock purchases*.



The CNS requirement is applicable to all buyers of farm products, including individuals.

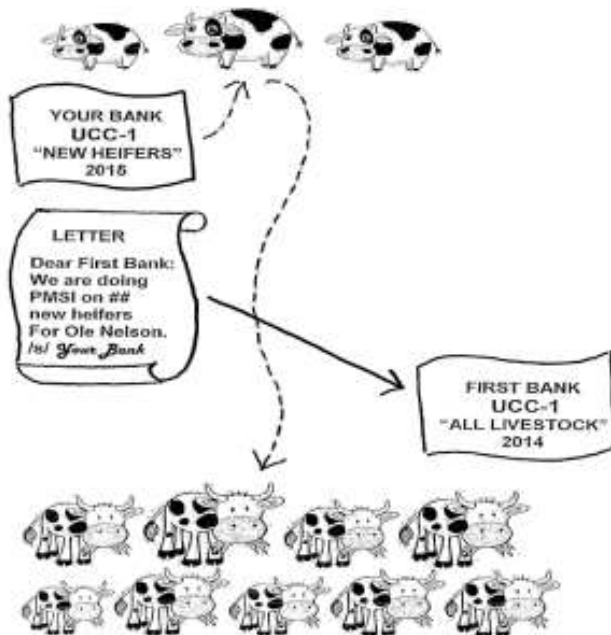
Where to File

In North Dakota, banks can fill out a combined UCC-1/CNS form, but the criteria for where to file is different. You must file your UCC-1 Financing Statement with the Secretary of State in the state *where the debtor is located*. The CNS must be filed in the "*destination state*" (i.e., where the ag product is likely to be sold). *E.g., if your farmer borrower herds his cattle across state lines to sell them in another state, you must file in the destination state; filing only in North Dakota will not protect you. You still have to have a UCC filing in the state where the farmer lives to perfect your state law UCC security interest, but your CNS notice needs to be filed in whatever states the crops or livestock are purchased from the farmer in order to protect your federal right to get your bank's name on the check.*

PMSI IN LIVESTOCK GIVES BANK FIRST PRIORITY STATUS EVEN IF OTHER CREDITORS HAVE A PRIOR PERFECTED SECURITY INTEREST

To get super priority in livestock (and inventory), the secured party is required to do several things (N.D.C.C. § 41-09-44):

- a. The security interest must be *perfected when the debtor receives possession* of the inventory or livestock;
- b. The purchase-money secured party must *send an authenticated notification* to all other secured creditors of record;
- c. The other secured creditors of record must *receive the notification within a certain amount of time* (5 years for inventory, 6 months for livestock) before the debtor receives possession; and
- d. The notice *must state* that the purchase-money secured party has or expects to acquire PMSI in inventory/livestock of the debtor and the notice must describe the inventory/livestock.



So, if another lender has a UCC lien on all cattle or sheep or chickens of Debtor, and your bank purchase money finances some additional animals for the herd or flock, it is vital that, in addition to filing your UCC-1 Financing Statement, you notify the other lender of your intent to finance the new additions via letter. (Certified mail is best to prove you did it). Otherwise you lose your first lien PMSI status on the new additions!

Example of Notice: “Dear 1st Bank: We at 2nd Bank will shortly be purchase money financing 100 heifers for addition to the herd of your customer Ole Nelson upon which you already have a filed UCC Financing Statement, and we will be filing our own purchase money security interest UCC-1 describing those animals financed by us. Sincerely, Barry Bottomline, VP.”

3. THE EFFECT OF STATUTORY AG LIENS ON YOUR PRIOR PERFECTED INTEREST

The Uniform Commercial Code recognizes that perfected agricultural liens on collateral have priority over the conflicting security interest in the same collateral “if the statute creating the agricultural lien so provides.” The statutes creating agricultural liens are found in [Chapter 35-30](#) (Agricultural Processor’s Lien) and [Chapter 35-31](#) (Agricultural Supplier’s Lien) of the North Dakota Century Code and do indeed provide that such agricultural liens have priority “over all other liens or encumbrances.” In other words, *Agricultural Processor’s Liens and Agricultural Supplier’s Liens will jump ahead in priority over your previously filed UCC Security Interest in crops and livestock, even though those liens come along later than your UCC filing.* An Agricultural Processor Lien will take the highest priority over all other liens and encumbrances on crops and other agricultural products pursuant to N.D.C.C. § 35-30-03. An Agricultural Supplier Lien will take the next highest priority under § 35-31-03. Your UCC Security Interest comes in at third place (if you were previously in first position).

If an Ag Processor or Ag Supplier Lien shows up in a lien search, you should examine the lien documents carefully to make sure the lienholder has complied with the law. Strict compliance with the statutes is required. If the lienholder has not strictly complied, you can challenge the lienholder and possibly knock the priority or the validity of the lien off the crops and livestock so that your UCC Security Interest ascends in priority.

4. IMPORTANT UPDATES TO NORTH DAKOTA GRAIN REGULATIONS

UPDATE

The North Dakota Ag Buyer statutes recently underwent big changes due to House Bill 1026, passed back on March 3, 2021. Major changes are summarized below:

Consequences for Unsigned Credit Sale Contracts

Sections 60-02-19.1 and 60-02.1-14, which cover credit-sale contracts, continue to require that credit-sale contracts are in writing, consecutively numbered, signed by both parties and executed in duplicate, as well as contain the following:

- a. The seller's name and address.
- b. The conditions of delivery.
- c. The amount and kind of grain delivered.
- d. The price per unit or basis of value.
- e. The date payment is to be made.
- f. The duration of the credit-sale contract.
- g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section [60-02-09 or 60-02.1-08]. However, if the [warehouseman or grain buyer] has obtained bond coverage in addition to that required by section [60-02-09 or 60-02.1-08] and such coverage extends to the benefit of credit-sale contracts, the [warehouseman or grain buyer] may state the same in the credit-sale contract along with the extent of such coverage.

First, the new legislation acknowledges that an electronic signature satisfies the requirement that the contract be signed by both parties. More importantly, section 60-02-19.1 now provides that an unsigned contract is considered an unconverted scale ticket, meaning that the farmer forfeits any trust fund or credit-sale contract indemnity fund protection ([see below](#)); while section 60-02.1-14 states that an unsigned contract is not eligible for any protection provided by chapter 60-10.

Bond Protection Must Be Offered with Deferred-Payment Contract

Sections 60-02-01 and 60-02.1-01 of the North Dakota Century Code now define “deferred-payment contract” as “a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.” In other words, it is a credit-sale contract where price is set and payment is delayed (in contrast with price-later contracts, a subset of credit-sale contract in which the seller agrees to set a price at a later date).

Grain buyers and warehouses that offer deferred-payment contracts must offer bond protection.

New Law Requires Scale Tickets to Be Converted Sooner

Elevators issue scale tickets upon delivery of grain. Farmers must convert these scale tickets into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within a certain time. Under the prior law, farmers had 45 days after delivery of grain to convert the scale ticket. Under the new law, the scale ticket conversion time period is lowered to 30 days after delivery. *See* N.D.C.C. § 60-02-11.

The statute also adds a provision that “[a] producer that fails to convert a scale ticket...forfeits any trust fund or credit-sale contract indemnity fund protection...”

In addition, the statute previously provided an exception to the conversion requirement where the farmer signed [a form](#) waiving all rights to trust benefits and identifying each scale ticket to which

the waiver applied, and the form was signed by the elevator. However, this part of the statute has been deleted, removing this possibility of waiver.

Electronic Signatures Allowed

As stated above, sections 60-02-19.1 and 60-02.1-14 were amended to allow for electronic signatures of credit-sale contracts. Again, note that unsigned contracts must be considered unconverted scale tickets or are not eligible for protection.

Commissioner Can Now Act as Insolvency Trustee Without Court Approval

Under the previous law, the Commissioner was required to apply to the district court for authority to act as trustee upon insolvency. The court would determine whether to grant the application and, if granted, the Commissioner could move forward.

Now, sections 60-04-03 and 60-02.1-29 allow the Commissioner to act as trustee immediately upon his or her own determination that the warehouse or grain buyer is insolvent. There is no longer any requirement to go through the district court.

ARE YOU DEALING WITH A BONDED ENTITY?

Bankers should check Contracts and AR Aging to see if the farmer is dealing with licensed and bonded entities. Electronic/Digital Brokers and Electronic/Digital Elevators are increasing, as well as the use Master Service agreements that indemnify them. Electronic/Digital Brokers and Electronic/Digital Elevators tend not to check UCC-1 filings like elevators do, instead requiring the producer to inform them of the filings. During inspections, banks are more frequently included on elevator checks than the settlement checks of roving grain buyers and brokers.

Bank due diligence could include:

1. Produce signed price later contracts
2. Contemplate requiring bond coverage
3. List of buyers

THE DEFERRED-PAYMENT CONTRACT BOND

As stated [above](#), grain buyers and warehouses that offer deferred-payment contracts must offer bond protection to producers. This means that producers can purchase bonding coverage of deferred payments from the grain buyer or at the warehouse, which are issued by a bonding company in the name of the producer. The fee is based on the elevator's financials.

The deferred-payment contract bond may be utilized as a risk management tool. An example would be to buy additional bonding on the elevator above what is not covered by the indemnity fund on deferred-payment contracts. Say they deferred \$500,000 and the indemnity fund covers \$285,000 net. They could buy bond coverage for the \$215,000 not covered by the indemnity fund.

2021 NDBA AG CREDIT CONFERENCE

**AG SECURITY AGREEMENTS
AND MORTGAGES**

Breakout Session II
10:40-11:25 a.m.
Thursday, October 7, 2021

Presented By:

Tracy A. Kennedy

Attorney at Zimney Foster P.C. and General Counsel for the North Dakota Bankers Association

Prepared By:

Tracy A. Kennedy, John D. Schroeder, and Jocelyn A. Dravitz

Attorneys at Zimney Foster P.C.

Copyright © 2021. All rights reserved.

These materials provide general information and are intended for educational purposes only. Nothing in this program, the program materials, or communications stemming from the program (including questions and answers) should be considered as the rendering of legal advice or as creating an attorney-client relationship between any program attendees/readers and the presenters/authors. Persons having a need for legal advice should engage the services of a licensed attorney in all legal matters. Presentation attendees/readers should assure themselves that these materials are current and applicable at the time they are reviewed or considered. The presenters/authors do not warrant that these materials will continue to be accurate because laws and interpretation of laws evolve and change over time, nor do they warrant them to be completely free of errors when delivered/published. Presentation participants/readers should verify statements before relying on them.

1. AG SECURITY AGREEMENTS

When providing farm operating credit, it is a good idea to require the farmer to provide “security” for the debt. A Security Agreement will allow you to take some of the farmer’s property if the farmer does not pay the indebtedness. Security Agreements are governed by Article 9 of the Uniform Commercial Code, Secured Transactions, adopted in North Dakota as [Ch. 41-09](#), N.D.C.C.

DESCRIPTION OF COMMON AG COLLATERAL

Inventory

Inventory is goods, other than farm products, that are leased by a person as lessor or held by a person for sale or lease or to be furnished under a service contract, raw materials and work in process, and goods consumed in a business.

Note below that for something to be a “farm product,” the debtor must be engaged in a farming operation with respect to the goods. Thus, if livestock is held by someone not engaged in farming, it may be considered inventory. Livestock may also be considered inventory in other scenarios, depending on how they are used (*i.e.*, held for sale or lease).¹ ***You can avoid the whole issue simply by including both categories of collateral in your Security Agreement!***

Farm Products

The UCC recognizes “Farm Products” as a category of collateral, described as follows:

Goods that are not standing timber, are subject to an agricultural lien, or are crops (including trees, vines, bushes, aquatic goods), livestock (born or unborn; includes aquatic goods), supplies used or produced in a farming operation, or products of crops or livestock in their unmanufactured states. N.D.C.C. § 41-09-02(1)(jj). For the crops, livestock, supplies or products to be “farm products,” the debtor must be engaged in a farming operation with respect to the goods. A farming operation means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

N.D.C.C. § 41-09-02(1)(kk).

¹ See *In re Brower*, 104 B.R. 226, 233 (Bankr. D.N.D. 1988) (stating that livestock is inventory when placed by a farm debtor into the hands of a marketing agent for sale, or when the farm debtor purchases the livestock with the intent to immediately resell them as part of his secondary business as a cattle trader).

it may be considered inventory. Livestock may also be considered inventory in other scenarios, depending on how they are used (*i.e.*, held for sale or lease).¹ ***You can avoid the whole issue simply by including both categories of collateral in your Security Agreement!***

Farm Products

The UCC recognizes “Farm Products” as a category of collateral, described as follows:

Goods that are not standing timber, are subject to an agricultural lien, or are crops (including trees, vines, bushes, aquatic goods), livestock (born or unborn; includes aquatic goods), supplies used or produced in a farming operation, or products of crops or livestock in their unmanufactured states. N.D.C.C. § 41-09-02(1)(jj). For the crops, livestock, supplies or products to be “farm products,” the debtor must be engaged in a farming operation with respect to the goods. A farming operation means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

N.D.C.C. § 41-09-02(1)(kk).

Include Proceeds for Cattle Already Sold

You want your security interest to continue in any proceeds of the original collateral. For instance, if the cattle gets sold, your security interest continues in the proceeds checks.

2. PERFECTING AND PROTECTING YOUR INTEREST IN CROPS AND LIVESTOCK

UCC-1 FINANCING STATEMENT AND CNS

To protect your interest in pledged personal property as against other lien holders, purchasers, and bankruptcy trustees, you must “perfect” your security interest. Security interests in inventory, farm products and general intangibles can all be perfected by filing a UCC-1 Financing Statement.

When dealing with farm products, you must also file in the Central Notice System (CNS) if you want to get your bank’s name as a payee on a check for crop or livestock purchases. Your CNS must include a reasonable description of the property, including the county in which the property is located. Your name and information will then appear on a list distributed by the Secretary of State, which will allow you to impose liability for the security interest against a crop or livestock buyer if needed. N.D.C.C. §§ 41-09-40(6); 54-09-10.

¹ See *In re Brower*, 104 B.R. 226, 233 (Bankr. D.N.D. 1988) (stating that livestock is inventory when placed by a farm debtor into the hands of a marketing agent for sale, or when the farm debtor purchases the livestock with the intent to immediately resell them as part of his secondary business as a cattle trader).

Chattel Paper

Any record evidencing both an obligation to pay money and a security interest in goods or lease of specific goods. Typical examples are a Retail Installment Contract and Security Agreement covering a motor vehicle or a refrigerator, and a lease finance contract. Chattel paper includes both “electronic chattel paper” and “tangible chattel paper.”

Deposit Accounts

Demand, time, savings, passbook or other similar accounts maintained with a bank. Does not include investment property or an account evidenced by a certificate of deposit or an instrument.

Documents

Documents of title, such as bills of lading or warehouse receipts.

Instruments

Negotiable instruments or other writings evidencing a right to payment of money that can be transferred by delivery with any necessary indorsement or assignment. Includes promissory notes.

General Intangibles

Includes government payments, which are particularly important with farm borrowers. You are taking an interest in the payments that the government may pay to your borrower as emergency assistance or other.

Proceeds

You want your security interest to continue in any proceeds of the original collateral. For instance, if the cattle gets sold, your security interest continues in the proceeds checks.

CROSS-COLLATERALIZATION

The Uniform Commercial Code authorizes cross-collateral clauses under which collateral acquired at any time, including existing and future assets, secures advances whenever made.²

² Official Comment 2 to U.C.C. § 9-204. *See also Horob v. Farm Credit Services of North Dakota ACA*, 2010 ND 6, ¶ 15, 777 N.W.2d 611 (citing Official Comment 2 to U.C.C. § 9-204 and “conclud[ing] the cross-collateral clause of the security agreement...[wa]s valid and enforceable”).

FUTURE ADVANCES


A Security Agreement may provide that the collateral secures future advances or other value, regardless of whether the advances or value are given pursuant to commitment.³


GRANTOR’S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL

Perfection of Security Interest

Require Grantor to agree to execute UCC-1 Financing Statements or take whatever actions necessary to perfect and continue the Bank’s security interest in the Collateral.

Notices to Bank

 It is important that Grantor notify the Bank of significant changes that may affect the Bank’s security interest, *especially of any change in Grantor’s name/business name. *This is particularly important because the UCC-1 Financing Statement (the document that perfects your security interest in most collateral) must contain the “correct debtor name.” If the name changes and you do not amend your UCC-1 with 4 months of the change, you may lose your priority position with respect to collateral!* N.D.C.C. § 41-09-78(3).

 *The “correct debtor name” for an individual is usually the name listed on their driver’s license. For an entity, use the name stated on the public organic record most recently filed with the secretary of state (i.e., Articles of Incorporation).*

Location of the Collateral

Grantor must keep the Collateral at a location agreed upon by the Grantor and Bank and keep Bank apprised of where the Collateral is located. Also have Grantor consent to the Bank’s right of access for cultivation of crops or livestock.

Removal of the Collateral

Prohibit Grantor from moving the Collateral from its existing location without Bank’s prior written consent.

Transactions Involving Collateral

Prohibit Grantor from selling, transferring or disposing of the Collateral (except for inventory in the ordinary course of business); and from pledging, mortgaging, or encumbering the Collateral in any way without the prior consent of the Bank (including the grant of junior security interests).

³ N.D.C.C. § 41-09-14 (U.C.C. § 9-204).

Sale of Farm Products

Grantor may only sell, consign, lease, exchange, transfer or otherwise dispose of crops, livestock, or other farm products in accordance with specific terms agreed upon by Bank.

Care and Preservation of the Crops

Requires Grantor to maintain certain duties with respect to the care and preservation of crops and allows Bank to enter upon the premises where the crops are located to examine and inspect the crops.

Care and Preservation of the Livestock

You want to ensure that Borrower is sufficiently caring for the animals and taking steps (*e.g.*, proper feed, vaccines) to prevent a major loss for the bank; and, if not, be able to step in and care and preserve the animals and the Bank's interest.

Inspection of Collateral

Again, specifically allows Bank to examine and inspect the Collateral at all reasonable times.

GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS

Allows Grantor to possess Collateral until default and to collect Collateral consisting of accounts until otherwise notified by Bank. Gives Bank rights to collect the accounts at any time (even if no default exists). If Bank has possession of any Collateral, it is deemed to exercise reasonable care in the custody and preservation of the Collateral.

EVENTS OF DEFAULT

The law does not define "default." Rather, it leaves it up to the parties to define what default is within the Security Agreement.

It is recommended you include the following events of default in your Security Agreement, which are common to all loan documents, plus events of default that may be more unique to secured transactions, such as Defective Collateralization (non-enforceability, invalidity, or lack of perfection of all or any part of the security interest or lien, for any reason).

Payment Default

Failure to make payments when due is the most common form of default.

Other Defaults/Cross-Default

A cross-default clause will state that a default under any related loan documents (promissory note, mortgage, etc.) constitutes a default under that Security Agreement.

False Statements

Borrower is in default if any warranties, representations or statements made by Borrower are or become false or misleading.

Death or Insolvency

Death of Borrower or dissolution/termination of Borrower (if a business), as well as insolvency or bankruptcy.

Creditor of Forfeiture Proceedings

Commencement of foreclosure or forfeiture proceedings against the Borrower by other creditors of Borrower.

Adverse Change

A change occurs that causes Bank to believe Borrower will be unable to pay back the loan or perform under the terms of the Security Agreement.

Events Affecting Guarantor

If the loan is secured by Guaranties, and any of the foregoing events of default occur with respect to any guarantor endorser, surety or accommodation party; or such parties revoke or dispute their liability under the Guaranty.

RIGHTS AND REMEDIES ON DEFAULT

When a debtor is in default, a secured party has the rights and remedies provided in Article 9 and those provided in the Security Agreement. Good rights and remedies to include in your Security Agreement include:

Acceleration of Indebtedness

Most agreements provide Bank with the option to “accelerate” the debt upon default. *For example, if your borrower misses a couple of payments and is in default by reason of nonpayment, you will have the option to declare the entire amount (rather than just the two missed payments) immediately due and payable.*

Assembly of Collateral

If so agreed, and in any event after default, Bank may require the debtor to assemble the collateral and make it available to the Bank at a place to be designated by the Bank which is reasonably convenient to both parties.

Care and Possession of the Crops

Bank can enter upon the premises where crops are located and use Grantor's equipment and machinery to take care of the crops, prepare them for sale, and sell them.

Possession of the Livestock

Bank can enter upon the premises where the livestock is located and use Grantor's supplies to care for the livestock, move the livestock, prepare the livestock for sale and sell the livestock.

Sell the Collateral

Bank can sell, lease, transfer or otherwise deal with the Collateral or proceeds thereof in Bank's own name or that of the Grantor, and may sell the Collateral at public auction or private sale (with notice given as required by law). Add expenses relating to the sale to the indebtedness.

Appoint Receiver

Bank may seek the appointment of a receiver to take control of and manage the Collateral.

Obtain Deficiency

After the Bank sells the Collateral and applies the amounts to the debt, it may obtain a judgment against Borrower for any remaining debt due.

Other Rights and Remedies

Broadly gives Bank all the rights and remedies of a secured party under Article 9 of the UCC, as well as any other rights and remedies it may have at law, in equity, or otherwise.

2. MORTGAGES

Most farm mortgages are given by a farmer borrower to the Bank as collateral for a loan. The mortgage gives the Bank a claim against the real property identified therein, and the Bank can foreclose on the property if the borrower is in default.

THE INDEBTEDNESS

How the mortgage describes the “indebtedness” or secured debt is key. Of course, you can cite to the specific Promissory Note, but you should also consider the following clauses to secure future additional debts:

Include Future Advances

A mortgage containing a future advance clause is very powerful in North Dakota, because the holder of the mortgage will maintain its priority position with respect to all future advances, even if made after subsequent liens.⁴ For this same reason, you should be extremely cautious about taking a subordinate mortgage behind a mortgage that includes such open-ended future advance clause.

Include Cross-Collateralization

Including a cross-collateralization clause will ensure that the mortgage secures future obligations of the mortgagor to the Bank.

Do Not Include Maximum Lien Amount

North Dakota does not require a maximum lien amount. Though there may be circumstances where a maximum lien amount would be appropriate (*e.g.*, where a debtor wishes to preserve equity in the mortgaged property by contracting with the Bank to specifically limit the amount of indebtedness secured by the mortgage), it certainly would not be recommended where future advances are anticipated. In fact, in the latter instance, it is recommended the maximum lien amount be stated as “unlimited.”

⁴ See *Union Nat. Bank of Oshkosh v. Milburn & Stoddard Co.*, 73 N.W. 527, 527 (N.D. 1897) (“If [a] mortgage states on its face that it is given as security for future advances...the holder of a second lien on the same property, who has notice, either actual or constructive, of such mortgage, takes subject thereto, not only as to all advances which had been made when his lien attached, but also as to all future advances made by the holder of such mortgage before notice that another lien has attached to the property. The recording of the second lien does not give the holder of the prior mortgage constructive notice of such second lien, and therefore advances thereafter made are protected the same as advances made before such second lien is recorded, provided the holder of the first lien has no other notice of the existence of such subsequent lien.”).

ASSIGNMENT OF LEASES AND RENTS

You may have an Assignment of Leases and Rents contained within the mortgage or as a separate document. This allows the Bank to request that all future rents be made payable and be paid directly to the Bank instead of the mortgagor farmer. If the lessee continues to pay the mortgagor directly, the Bank will have the right to maintain an action against the lessee.

EVENTS OF DEFAULT

[See the section on Events of Default under Ag Security Agreements.](#) Defective Collateralization would also work as an Event of Default under the Mortgage. Another Event of Default could be the failure to discharge taxes or other liens or charges levied or assessed the property.

RIGHTS AND REMEDIES ON DEFAULT

The Mortgage should allow Bank the following rights and remedies upon the occurrence of an Event of Default:

Acceleration of Indebtedness ([see above](#))

Collect Leases and Rents

If you have an [Assignment of Leases and Rents](#), Bank may, upon default of the Mortgagor, notify tenants and collect proceeds of leases and rents directly.

Judicial Foreclosure

Bank may foreclose the mortgage using the procedure available by law. *(In North Dakota, Bank must commence a lawsuit in order to foreclose the mortgage.)*

Sale of the Property

Bank can sell the property in compliance with the foreclosure statutes and be reimbursed for the reasonable expenses of foreclosing, preparing for sale, and selling the mortgaged premises.

Obtain Deficiency

Bank may obtain a judgment for any and all amounts remaining unpaid on the indebtedness after sale of the mortgaged property.

*Note: Though North Dakota limits deficiency judgments for certain foreclosures, it does allow for a deficiency judgment on **agricultural land of more than 40 acres**, but solely for the difference between the amount of the debt and the fair market value of the land at the time of commencement of the action. N.D.C.C. § 32-19-03.*

HOMESTEAD EXEMPTION WAIVER

A “homestead” in North Dakota is essentially the dwelling of an individual along with the land the dwelling sits on. Note that this would apply to agricultural land if the farmer resides upon it. An exemption for the homestead is provided in section 47-18-01 of the North Dakota Century Code:

The homestead of any individual, whether married or unmarried, residing in this state consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed one hundred thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. The homestead may not embrace different lots or tracts of land unless the lots or tracts of land are contiguous. For purposes of this section, "contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

The law, however, also provides for a waiver of homestead exemption. Under N.D.C.C. § 47-18-05.1, a mortgage on a homestead which is not a purchase money contract must contain the following statement printed in a *conspicuous* manner:


I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE AND THAT, BY SIGNING THIS CONTRACT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS CONTRACT.

Spouse 1

Date

Spouse 2

Date

 This statement must be immediately followed by the date and the signature of the person to indicate that the person is specifically and knowingly waiving the exemption, which must be a separate signature from that person’s signature to the entire mortgage contract.

So, what are the consequences of failing to do so? The Supreme Court of North Dakota has held that a bank’s failure to have the homestead exemption waiver clause printed in a conspicuous manner in the mortgage renders the mortgage of the homestead property unenforceable!⁵

⁵ *Red River State Bank v. Reiersen*, 533 N.W.2d 683, 688 (N.D. 1995).

3. OTHER COMMON TERMS

It is further recommended that Banks include the following terms in their loan documents (*i.e.*, the Loan Agreement and/or Promissory Note):

ADVANCE AUTHORITY

A provision naming the person(s) eligible to request advances and authorize payments under a line of credit.

CESSATION OF ADVANCES

States that Bank will not have any obligation to make loan advances or disburse loan proceeds in the event that Borrower or any Guarantor is in default.

AFFIRMATIVE COVENANTS FROM BORROWER

- Borrower will produce financial records and financial statements, including annual personal financial statements, tax returns, and annual farm plan.
- Minimum Debt Service Coverage
- Maximum Debt to Equity
- Maximum Capital Expenditures
- Each insurance policy shall include an endorsement providing that coverage in favor of Bank will not be impaired in any way by any act, omission, or default of Borrower or any other person.
- Borrower will comply with the terms and conditions of all other agreements between the parties.
- Borrower will permit inspection of the collateral and Borrower's books, accounts, and records.

NO RENEWAL OR FUTURE LOAN OBLIGATION

An assertion that Bank has not made any commitments to lend money to Borrower in the future.

BANK'S EXPENDITURES

If Borrower fails to pay any required taxes, insurance, assessments, costs or expenses; the bank will have the discretion to make expenditures for those purposes and add the amount expended to the Indebtedness.

WAIVER OF JURY TRIAL

The right to a jury trial can be waived by written contract.

NDBA Ag Credit Conference

Bridgette Readel
Hunter, North Dakota

1

Who's this chick and why do I care?



2

- Who remembers the 1980s?
- Who remembers 2008 run up of glyphosate/fertilizer?
 - What global events took place then?

3

- Growers are concerned about lenders limiting their crop input purchases.
 - What is the risk when that happens?
 - Low yield, dockage, long term weed concerns, lighter weight critters, poor ROI
- How can we justify the cost of higher end inputs vs. cheaper options?
 - Service policies, performance, finance program tie ins
- What traits are available?
 - Xtend
 - Enlist
 - Xtend Flex
 - 4 way stack
 - LL
 - Conventional

4

Why are there input shortages?

- Heavy inventory from 2019 to 2020 due to PP acres, etc. meant low forecasting for inputs.
- 2021: Minimal inventory at the farmgate level

5

- Coming off low price, September 2020: China Floods & shuts down yellow phosphorus availability
 - a. Critical component of glyphosate, phosphate fertilizers and others
- Current flooding in China and Germany - bigger issues than 1 year ago
- COVID - China Lockdown = Shut down, ports closing
- Delta Variant

6

- China vaccines only 30%-40% effective
- 2021 China Communist 100 Year Celebration = 2 week shutdown
- 2022 Olympics = 2 month or so shutdown
- Electricity - China Hydro too much or too little - impacts electricity availability - shutdown factories first prior to households and schools, etc.
- Factories running weekends only
- Factory Accidents-China and India both had issues
 - clethodim and glufosinate tech essential in India
 - Due to accidents, additional inspections are occurring and shutting more plants down due to being out of spec

---Internal Use---

7

- USA - February Texas freeze, shut down electrical grid
- USA – May Storms in Louisiana –
 - Shut down essential plants for chemistry
 - Labor shortage and turnover,
 - the technical material was not available,
 - Lack of qualified labor to produce finished goods
- President and Congress not helping with this issue/making it a priority

---Internal Use---

8

- Logistics globally / locally –
 - West coast import volume up 30% YOY while export volume down 23%
 - price increases due to supply and demand –
 - paying over \$6.00 loaded mile to carry freight - huge cost increase
- Backlog issue - Target / Walmart driving up freight charge –
 - their margin structure can out compete chemistry for space
 - Glyphosate tech vs apple watches - more margin in apple watches
 - Christmas 3-4 months away - this will take all freight availability to meet consumer demands

---Internal Use---

9

- South America - currently pulling supply from our market; shorting our needs/inventory.
- Fertilizer increases of \$100-150/ton daily are happening.
 - UK fertilizer shutting down impacts CO2 production: cooling for meat in grocery stores, drink carbonation.
 - WHAT ABOUT OUR BEER??

Bottom line-This issue is very complex and will take 12-18 months to correct itself if everything were to go perfect
Don't expect perfect -weather, COVID, etc..

---Internal Use---

10

- Manufacturer price increases
 - Aforementioned reasons
 - Will 5% price increase outpace interest rate grower is paying?
 - Glyphosate has increased over \$18/gal since Jan. 2020.
 - \$4.50/acre increase
- If a grower returns product, can they buy it back or will demand from neighbors outpace you?
- Will supply arrive back in your hands in time for application?
- Finance incentives in seed/chem grower programs

Why/why not should growers return Crop Protection product?

---Internal Use---

11

- Corn seed price expected to spike in 2023.
- What inputs are most worrisome?

Supply Concerns

Grower	Retailer
crop protection availability	crop protection availability, cost
tanks, pumps	tanks, pumps, shuttles
Mini bulk shuttles	FERTILIZER – supply/costs
Water in drought situation	Labor

What inputs to buy?

---Internal Use---

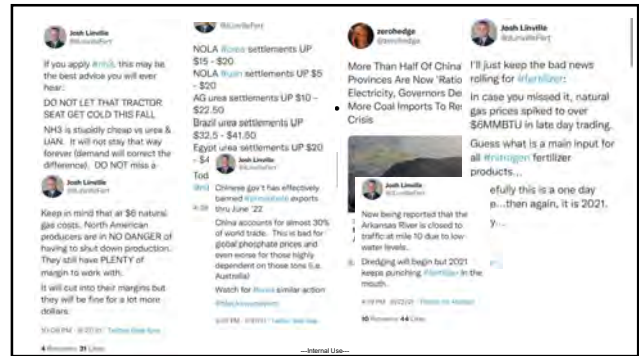
12

- Encourage prepay on a variety of inputs.
- **What are the price changes over the last 24 months?**
 - Anywhere from 5% to 50% depending on the product.
- What can growers save by using prepay for inputs?
 - Interest/Finance charges
 - Crop Input finance programs bring discounts
 - Having actual product; take possession of it.
- Growers and retailers will want to read contracts closely.
 - Force major clauses

Why does Prepay in 2021 matter?

---Internal Use---

13



---Internal Use---

14

2021				2022 Projection- 9/4/21				2022 Projection- 9/4/21					
Corn Fertilizer				Corn Fertilizer				Corn Fertilizer					
Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Difference % from '21	increase
Urea	219.07	0.18	39.43	Urea	219.07	0.18	39.43	Urea	219.07	0.18	39.43	0.00%	0
11-52-0	91.41	0.25	22.42	11-52-0	91.41	0.25	22.42	11-52-0	91.41	0.25	22.42	0.00%	0
0-0-60	52.48	0.16	8.84	0-0-60	52.48	0.16	8.84	0-0-60	52.48	0.16	8.84	0.00%	0
21-0-24	77.41	0.16	11.64	21-0-24	77.41	0.16	11.64	21-0-24	77.41	0.16	11.64	0.00%	0
10-34-0	58.34	0.21	12.32	10-34-0	58.34	0.21	12.32	10-34-0	58.34	0.21	12.32	0.00%	0
28-0-0	138.31	0.11	14.95	28-0-0	138.31	0.11	14.95	28-0-0	138.31	0.11	14.95	0.00%	0
9N-2n	0.25	15.5	3.88	9N-2n	0.25	15.5	3.88	9N-2n	0.25	15.5	3.88	0.00%	0
Instruct				Instruct				Instruct				4.07	4.07
												379.48	62,116,955.0, 529,331

---Internal Use---

15

2021				2022 Projection- 9/4/21				2022 Projection- 9/4/21					
Wheat Fertilizer				Wheat Fertilizer				Wheat Fertilizer					
Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Difference % from '21	increase
Urea	246.91	0.18	44.4	Urea	246.91	0.18	44.4	Urea	246.91	0.18	44.4	0.00%	0
11-52-0	26.98	0.26	7.02	11-52-0	26.98	0.26	7.02	11-52-0	26.98	0.26	7.02	0.00%	0
0-0-60	0	0	0	0-0-60	0	0	0	0-0-60	0	0	0	0.00%	0
21-0-24	63	0.14	8.82	21-0-24	63	0.14	8.82	21-0-24	63	0.14	8.82	0.00%	0
DV8 11-52-0	100	0.26	26	DV8 11-52-0	100	0.26	26	DV8 11-52-0	100	0.26	26	0.00%	0
												145.33	54,288.5, 9

---Internal Use---

16

2021				2022 Projection- 9/4/21				2022 Projection- 9/4/21					
Barley Fertilizer				Barley Fertilizer				Barley Fertilizer					
Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Product	Ave rate per ac	Ave cost per unit	Cost per acre	Difference % from '21	increase
Urea	160.98	0.18	28.9764	Urea	160.98	0.18	28.9764	Urea	160.98	0.18	28.9764	0.00%	0
11-52-0	0	0	0	11-52-0	0	0	0	11-52-0	0	0	0	0.00%	0
0-0-60	12.12	0.16	1.9392	0-0-60	12.12	0.16	1.9392	0-0-60	12.12	0.16	1.9392	0.00%	0
21-0-24	63	0.14	8.82	21-0-24	63	0.14	8.82	21-0-24	63	0.14	8.82	0.00%	0
DV8 11-52-0	100	0.26	26	DV8 11-52-0	100	0.26	26	DV8 11-52-0	100	0.26	26	0.00%	0
												65.7356	22,848.5, 257,932

---Internal Use---

17

- Anything that requires less fertilizer inputs
 - Soybeans
 - Canola
 - Peas
 - Lentils
 - sunflowers

What are the estimated crops to plant for 2022?

---Internal Use---

18

- Create & show how accurate numbers, cash flow, working capital lead to long term gains.
- Acknowledge net worth but equally explain & encourage the power or strong net worth & working capital.
- Acknowledge age & time of life vs. operational needs. Younger kids are cheaper vs. older kids with cars/college. With age comes a higher cost of living; don't ignore it & figure out how to work with it.
- If things go poorly, acknowledge the lenders role in the situation. Lenders should bear responsibility for helping borrowers restructure, cut back and get finances in line.
 - This doesn't mean, just borrow more money but go above and beyond to rectify the situation.

Grain Farmers – what do you want your banker to know?

—Internal Use—

19

- Help me understand what will happen if I overspend, what changes in our relationship?
- Help me understand the value of working capital and paying down debt vs. continued expansion or new equipment.
- Remember and remind me that the good times will end and the bad times will end.
- Diversity is key – what knowledge can you impart to me that can help?
 - Stocks? Business changes such as trucking?

Grain Farmers – what do you want your banker to know?

—Internal Use—

20

- If lender and borrower are not getting along, bring in a senior advisor from within the bank to help guide both parties.
- **Rising inputs and inflation are tricky. Look for ways to innovate within the operation to help stabilize capital and input costs.**
- Spend time with the banker in a long planning session. Brainstorm and view different scenarios. Use a conference room, use the large screen to actually see the big picture.
 - A big review like this once/year or biannually can be very helpful!
- Include the spouse
- Accurate cash flow projections and meeting those goals year in/out makes it easy for both parties. Use conservative numbers and try to hit or beat your projections year in/out.
- Would it be reasonable to see operating loans to move a line of credit to bridge growing seasons?

Grain Farmers – what do you want your banker to know?

—Internal Use—

21

- I Know my unit cost of production; that shows I'm paying attention to the business side of my operation.
- Make decisions based of my profitability, not his/hers
- Leniency and forgiveness
- Be interested in my operation. Drive out and see it, help me decide what we could be doing differently.
- Please understand my mental stress
- Be here to help me when times are good and more so when times are bad.
- Understand how a hedge works and that the margin account can be your friend.
 - www.beefbasis.com can help translate feeder cattle futures into calf price expectations.

RAnchers– what do you want your banker to know?

—Internal Use—

22

- Rural Farm Stress is at an all time high.
- Agribusiness is coaching bankers/grain merchandisers to look for signs of crisis.
- 4 Basic skills to help in a crisis:
 - It all starts with "how are you?" and mean it.
 - 1. Minimal encouragement – use brief, supportive words to encourage talking
 - 2. Silence – be a good listener
 - 3. Normalizing statements – share statements to help remove the stigma of seeking help
 - 4. Open ended questions
- ND Rural Farm Stress & mental health hotline: ND 211

Rural Farm Stress & Mental Health

—Internal Use—

23

- Thank you for your time and attention!
- Please contact me if I can be of service to you or speak to your chapters!

- Bridgette.readel@corteva.com
- Twitter: @bmreadel
- 701-799-4906

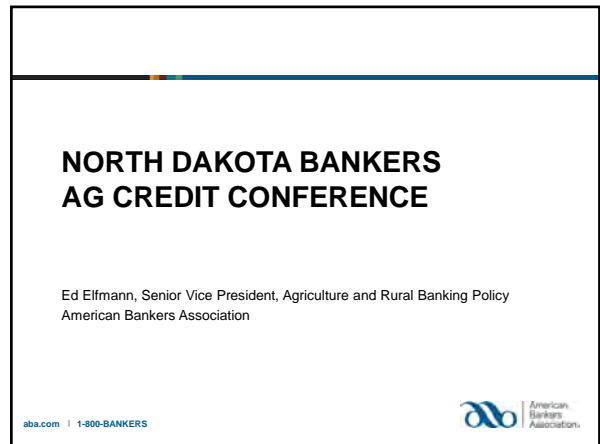
—Internal Use—

24





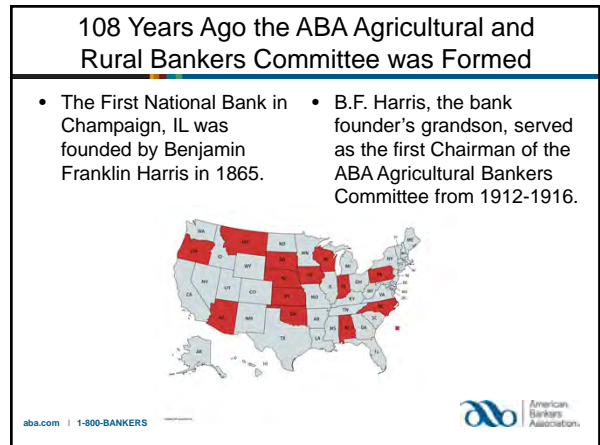
1



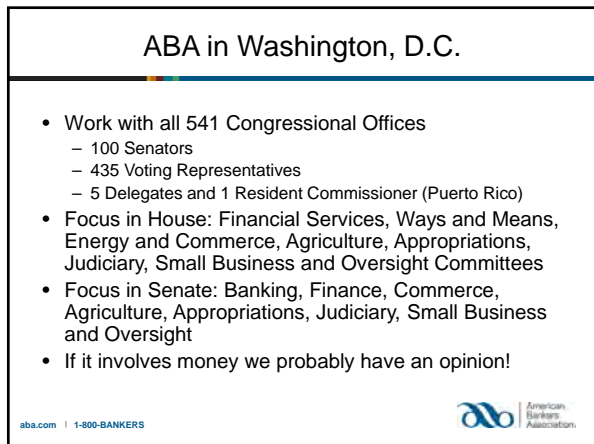
2



3



4



5



6

Reconciliation Bill Proposal

The bill provides Funding for economically disadvantaged farmers and ranchers

- The funds will be used to pay outstanding indebtedness to economically disadvantaged farmers and ranchers
- Limited to FSA direct and guaranteed loan programs
- For loans that existed on April 1, 2021
- Cap of \$200,000 per borrower
- Very little information on when these payments will be administered

aba.com | 1-800-BANKERS



7

Farm Debt Declined At The End Of 2020

Chart 1: Farm Debt Outstanding at Commercial Banks



Source: Federal Reserve Bank of Kansas City

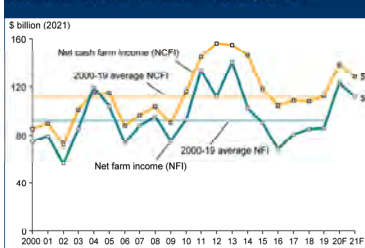
aba.com | 1-800-BANKERS



8

Net Farm Income Increasing

U.S. net farm income and net cash farm income, 2000-21F



Note: F = forecast. Values are adjusted for inflation using the Gross Domestic Product chain-type price index, 2021=100.
Source: USDA, Economic Research Service, Farm Income and Wealth Statistics.
Data as of February 5, 2021.

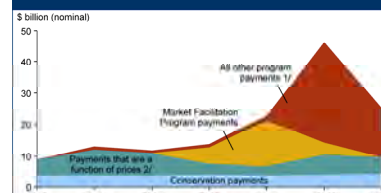
aba.com | 1-800-BANKERS



9

Payments to Farmers to Decline in 2021

Direct government payments to farm producers, 2015-21F



Note: F = forecast. 1/ All other program payments includes supplemental and ad hoc disaster assistance, which in 2020 and 2021 includes payments from the Coronavirus Food Assistance Program and the Paycheck Protection Program, and in 2021 also includes payments under the Consolidated Appropriations Act, 2021. 2/ Includes Price Loss Coverage, Agriculture Risk Coverage, loan deficiency payments (excluding grazing-out payments), marketing loan gains, certificate exchange gains, and dairy payments.
Source: USDA, Economic Research Service, Farm Income and Wealth Statistics.
Data as of February 5, 2021.

aba.com | 1-800-BANKERS



10

Payments Boosting Income

Net Farm Income w/ and w/o Federal Support



Source: USDA, Economic Research Service, Farm Income and Wealth Statistics.
Data as of February 5, 2021.

aba.com | 1-800-BANKERS

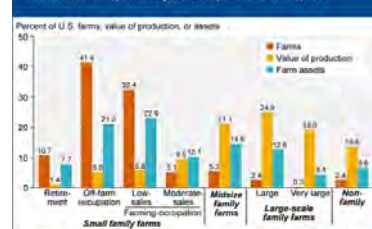


11

Farm Size and Production Continues to Change

- 8% of farms account for 65% of production and 31% of assets
- 90% of farms are small and hold 62% of assets
- Where do your farm or ranch customers fall on this spectrum?

Distribution of farms, value of production, and farm assets, 2019



Note: Details may not add up to 100 percent due to rounding. Small family farms have annual gross cash farm income (OCFI) less than \$300,000, measured before deducting expenses. Mixed family farms have OCFI of \$300,000-\$899,999. Large-scale family farms have OCFI of \$1,000,000 or more.
Source: USDA, Economic Research Service and USDA, National Agricultural Statistics Service, 2019 Agricultural Resource Management Survey (data as of December 2020).

aba.com | 1-800-BANKERS



12

ABA Agricultural Finance Issues in DC

- ECORA
- Farm Credit System
- Rural Development
- Hemp/Cannabis Financing
- Farmer Mac
- Small Business Administration Agriculture Loans
- Crop Insurance

aba.com | 1-800-BANKERS



13

Enhancing Credit Opportunities in Rural America

- Also known as ECORA
- Reintroduced in the House as H.R. 1977 by Rep. Ron Kind (D-WI) and Rep. Randy Feenstra (R-IA)
- Reintroduced in the Senate as S. 2202 by Senator Jerry Moran (R-KS)
- Removes taxation on farm real estate loans
- Any residence in a rural area or city of less than 2,500 is eligible
- There have been multiple grassroots pushes and we need all bankers to participate

aba.com | 1-800-BANKERS



14

Farm Credit System

- The Farm Credit System has grown to over \$365 billion in assets
 - Has grown from \$229 billion in 2010, a 63% increase
- FCS is a government sponsored enterprise (GSE) that competes directly with community banks.
- FCS tax rate is under 3%
- ABA is closely monitoring FCS and its regulator the Farm Credit Administration

aba.com | 1-800-BANKERS



15

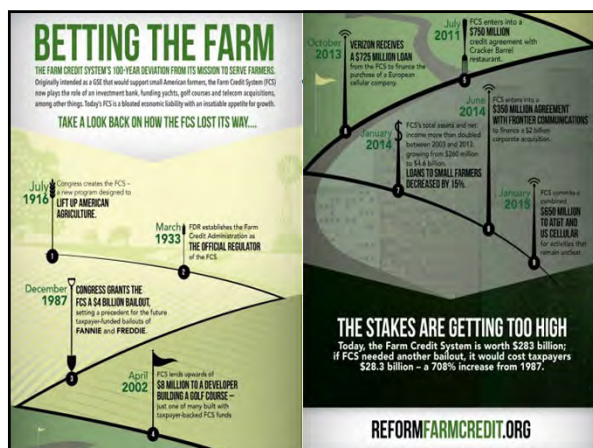
Farm Credit System

- Despite their massive growth, it took Congress years to have oversight hearings
 - House Agriculture Committee had an oversight hearing on November 19th, 2019
- ABA is advocating for yearly oversight hearings
- Visit reformfarmcredit.org for blogs and other information

aba.com | 1-800-BANKERS



16



17

Rural Development

- OneRD was effective October 1, 2020
 - Water and Waste Disposal Guaranteed Loan Program
 - Community Facilities Guaranteed Loan Program
 - Business and Industry Loan Guarantee Program
 - Rural Energy for America Guaranteed Loan Program
- Common application and consistent forms
- Check out rd.usda.gov/onerdguarantee for more information

aba.com | 1-800-BANKERS



18

Farmer Mac Alliance

- Beginning in 2002, ABA bankers started receiving additional benefits from Farmer Mac as part of a newly launched Alliance between ABA and Farmer Mac
- These benefits include:
 - Preferred pricing on select loan products
 - ABA member only communication link to answer product and credit questions
 - “On Demand” instructions for ag lending staff
- 7,000+ loans totaling \$5 billion purchased since 2002
- Over 450 lenders have utilized the Alliance

aba.com | 1-800-BANKERS



19

Other Agricultural Issues

- Carbon Credit Markets
 - Carbon credit markets may provide new income opportunities for farmers
- Small Business Administration
 - Rule to remove poultry lending was repealed in the CARES Act
- Crop Insurance
 - ABA is part of a larger crop insurance coalition
 - ABA continues to fight for crop insurance as a risk management tool that protects producers

aba.com | 1-800-BANKERS



20

ABA National Agricultural Bankers Conference



November 14-17, Cincinnati, Ohio

aba.com | 1-800-BANKERS



21

Thank you!

Ed Elfmann
ABA Center for
Agriculture
And Rural
Banking

American Bankers
Association
Washington, DC
202-663-5018
eelfmann@aba.com

aba.com | 1-800-BANKERS



22



LIVESTOCK DROUGHT LOAN PROGRAM

Purpose

This program assists local financial institutions in providing loans to North Dakota livestock producers for ag-related costs incurred as a result of the 2021 drought. BND has set aside up to \$150 million for 2021 drought related programs. Funds will be allocated on a first-come basis.

Applications will be accepted until June 30, 2022 at 5 p.m. CT.

Eligibility

The borrower must be a North Dakota resident or North Dakota family farm entity who is an active livestock producer or a landowner renting pasture for livestock feeding in North Dakota.

Participation Requirements

BND will participate up to 90 percent of the total loan amount, not to exceed a maximum participation of \$250,000. Standard underwriting procedures will apply to all loans.

Use of Proceeds

All ag-related expenses incurred as a result of the 2021 drought's impact on livestock and feedstock including but not limited to:

- Production or purchase of feed
- Transportation of feed or livestock
- Obtaining water for livestock (drilling a well, piping, hauling, etc.)
- Forage and seed costs
- Fencing expenses
- Cover crops
- Silaging costs
- Insecticide costs

Loan Terms

Up to a 5-year term. At the discretion of the originating lender, payments may be interest only for up to 12 months then convert to principal and interest payments amortized over the remaining term. Loan may be a line of credit that converts to a term loan after 12 months.

Interest Rate and Fees

BND Interest Rate: Interest rate will be fixed at 3.50% for up to 5 years. BND to net 3.25%. The lead lender to retain a 0.25% service fee.

Lead Lender Rate: The interest rate charged on the lead lender share of the loan may be determined by lead lender.

BND Fees: BND to receive a \$250 origination fee.

Collateral

Adequate collateral coverage will be required. Collateral to be shared prorata, or if the loan to liquidated value is at 120% or less based on BND's advance rates, a second lien on chattels may be acceptable. For collateral purposes, any FSA loan may require FSA subordination.

How to Apply

All applications must be submitted by a local lender. Please contact your local lender to initiate the loan application with Bank of North Dakota.





LIVESTOCK REBUILDER LOAN PROGRAM

Purpose

This program assists local financial institutions in providing loans to North Dakota livestock producers who plan to purchase and rebuild breeding stock in an effort to recover from the 2021 drought. BND has set aside \$150 million for the 2021 drought related programs. Funds will be allocated on a first come basis.

Applications will be accepted until June 30, 2023 at 5 p.m. CT.

Eligibility

The borrower must be a North Dakota resident or North Dakota family farm entity who is a livestock producer.

Participation Requirements

BND will participate up to 75 percent of the total loan amount, not to exceed a maximum participation of \$500,000. Standard underwriting procedures will apply to all loans.

Use of Proceeds

The program may be used to purchase breeding stock.

Loan Terms

Up to 7-year term. At the discretion of the originating lender, payments may be interest only for up to 2 years then convert to principal and interest amortized over the remaining term. Total repayment term, including interest only period, not to exceed 7 years. Average age of livestock being financed should be considered in determining the amortization period.

Interest Rate and Fees

BND Fixed rate option: Interest rate will be fixed at 3.50% for up to 7 years. BND to net 3.25%. The lead lender to retain a 0.25% service fee.

BND Variable rate option: Interest rate will be variable at BND Base minus 0.75%, adjusting monthly through maturity. BND to net BND Base minus 1.00%. The lead lender rate includes a 0.25% service fee. Rate floor of 2.50%

Lead Lender Rate: The interest rate charged on the lead lender share of the loan may be determined by the lead lender.

BND Fees: BND to receive a \$250 origination fee.

Collateral

Maximum loan to value of 75 percent on all chattels. Valuation is based on average market prices. Collateral to be shared prorata, or if the loan to liquidated value is at 120% or less based on BND's advance rates, a second lien on chattels may be acceptable. For collateral purposes, any FSA loan will require FSA subordination.

How to Apply

All applications must be submitted by a local lender. Please contact your local lender to initiate the loan application with Bank of North Dakota.





Scott Steffes, *Steffes Group*



A series of horizontal lines for writing, overlaid on a background image of a tractor in a field. The tractor is orange and black, pulling a blue implement. The background is a soft-focus landscape with a hazy sky and a field.



Tracy Kennedy, *Zimney Foster*

Lined writing area for notes or a transcript, consisting of multiple horizontal lines.





2021 NDBA AG CREDIT CONFERENCE
2021 LEGISLATIVE SUMMARY

Presented By: Tracy A. Kennedy, Attorney at Zimney Foster P.C. and General Counsel for NDBA

NDBA SPONSORED LEGISLATION

Bill No.	Title	Summary
SB 2197	DFI Record Confidentiality	Amends statutes relating to confidentiality of facts and information obtained by DFI/Commissioner
SB 2261	Burial Accounts	Defines “irrevocable itemized funeral contracts”; clarifies requirements for deposits of payments and the manner in which payments are to be carried
SB 2292	Mortgages: Expirations, Extensions and Modifications	Defines mortgage modifications and clarifies that they extend the expiration date of a mortgage; other amendments to the statutes for expiration and extension

NDBA BACKED LEGISLATION

Bill No.	Title	Summary
SB 2048	Revised Uniform Unclaimed Property Act	Adoption of RUUPA
SB 2191	Disposal of Abandoned Personal Property	Grantee may retain and dispose of abandoned personal property without any waiting period or notice where the real property has been adjudicated abandoned
HB 1026	Ag Warehousing	Several changes affecting ND grain regulations
HB 1187	Rebuilders Loan Program	Created BND rebuilders loan program and permanent loan fund
SB 2014	BND Budget	Concerning BND budget; merges some BND services into NDHFA and adds staff valuations and appraisals for ag and commercial loans
HB 1175	Covid-19 Liability Protection	Retroactively protects businesses (including banks) from civil liability lawsuits for decisions made during COVID-19 pandemic
SB 2008	DFI Appropriation	Appropriations for DFI
SB 2101	DFI Modernization Bill	Update to several DFI-related statutes
SB 2102	DFI Modernization Bill	Update to several DFI-related statutes
SB 2130	Health Insurance Cost-benefit Analysis	Requires cost-benefit analysis for mandated health insurance coverage legislation
HB 1366	Repairman’s Liens	Adds storage fees and transportation costs to covered charges; includes requirements for notice before foreclosure; and provides for nonjudicial disposition

HB 1425	Legacy Fund Investment Preference to Firms and Financial institutions in the State	Requirement that state investment board give preference to qualified investment firms with a presence in ND when investing legacy fund assets
HB 1077	Electronic Wills	Adoption of Uniform Electronic Wills Act

BILLS DEFEATED AFTER TESTIMONY OR LOBBYING BY NDBA

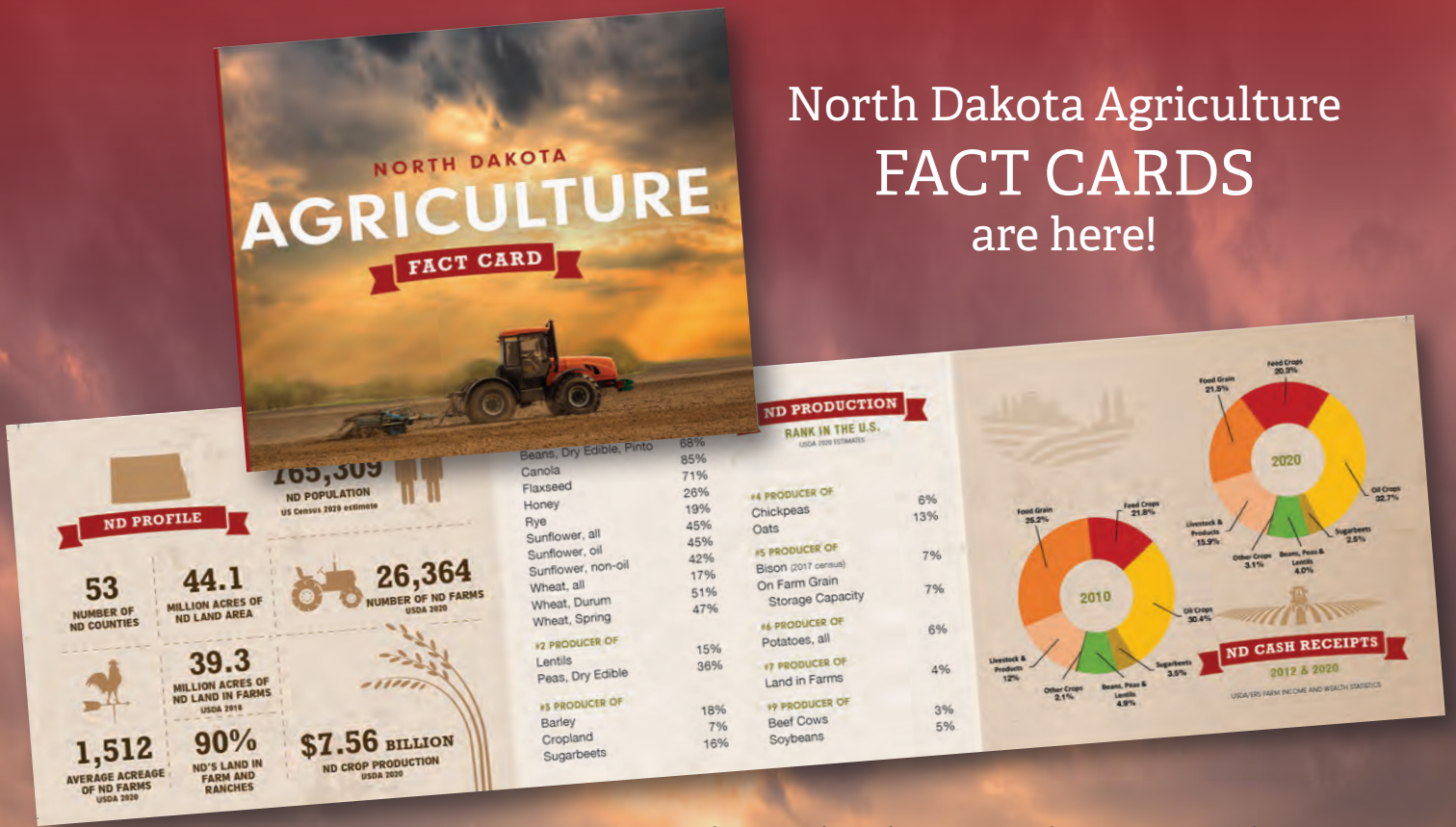
Bill No.	Title	Summary
HB 1363	Ante-Mortem Probate	Allowed persons other than testator to petition courts to declare a living person's will valid or invalid.
HB 1364	Duties of Personal Representative and Actions Against Trustee	Required real property be surrendered to "the person presumptively entitled thereto" and required PR petition court to determine whether property necessary for administration; also sought to change time limits for actions against a trustee.
HB 1267	Cryptocurrency Custodian Services and Exchanges	Allowed BND to provide digital currency custodian services and implement a digital currency exchange and interim study by BND re: feasibility and desirability of the same.
SB 2223	Deed in Lieu	Prohibited deeds in lieu of foreclosure as an option to bypass judicial foreclosure.
HB 1172	Farmer Mediation	Proposed mandatory farmer-lender mediation for ND banks.
HB 1268	Fintech Sandbox	Fintech sandbox for innovative financial products and services and criminal history background check.

INTERIM STUDIES

Bill No.	Title	Summary
HB 1231	Investing Legacy Fund Moneys Locally	During the 2021-22 interim, the legislative management shall consider studying the benefits of investing legacy fund moneys locally before investing any moneys outside the state.

NDBA's 2021 Legislative Summary contains more detail and can be found at the following link:
<https://www.ndba.com/uploads/publications/Legislative%20Summary%202021/2021%20Summary.pdf>

North Dakota Agriculture FACT CARDS are here!



The North Dakota Agriculture Fact Cards are produced by the North Dakota Bankers Association and are complimentary to NDBA members. The card provides useful information on North Dakota agriculture as well as production statistics.

Banks may order as many cards as needed. Potential uses include handing out to customers, placing them in bank lobbies, making available for FHA, 4-H banquets and other agriculture-related events.

Place Your Order Today!

Contact NDBA at 701.223.5303 or email: ndba@ndba.com.





ABA AGRICULTURAL Bankers Conference

 **MOVING FORWARD**

November 14–17, 2021

Duke Energy Convention Center | Cincinnati, OH

We're back—and right on time.

After more than a year mixed with both caution and optimism, it's finally time to examine the lessons learned. Together, we'll tackle the new state of ag banking, emerging risks and rewards in the lending environment, and the rural economy's long-term outlook.

Don't miss this long-awaited event for ag bankers in every role.



REGISTER TODAY
aba.com/AgConfSA



American
Bankers
Association®



NORTH DAKOTA
BANKERS
ASSOCIATION

North Dakota Bankers Association

122 E Main Ave., Suite 201

PO Box 143

Bismarck, ND 58502-1438

701.223.5303

www.ndba.com