
ASK KENNEDY

August 7, 2024

Topics Covered:

- Special Guest: Deneen Axtman | NDBA Chair | Senior Vice President and Chief Operating Officer of Cornerstone Bank
- Special Guest: Ann Reich | Senior Vice President of Strategic Partnerships, NDBA
- Special Guest: Dorothy Lick | Senior Vice President of Education, NDBA
- Member Questions
- The CFPB Releases and Revises Mortgage Servicing Rules and Loss Mitigation Framework with new Proposed Rule
- Rohit Chopra Director of the CFPB, is in Favor of the CRA Applying to Credit Unions
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- ABA Fraud Contact Directory
- Upcoming NDBA Events and Trainings

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Special Guest: Deneen Axtman, NDBA Chair, Senior Vice President and Chief Operating Officer of Cornerstone Bank

Please welcome one of this month's guests, Deneen Axtman! Deneen is the current chair of the North Dakota Bankers Association and a Senior Vice President and Chief Operating Officer of Cornerstone Bank.

Special Guest: Ann Reich, Senior Vice President of Strategic Partnerships, NDBA

Please welcome one of this month's guests, Ann Reich! Ann will be talking about the brand new NDBA Fraud Forum.

Special Guest: Dorothy Lick, Senior Vice President of Education, NDBA

Please welcome one of this month's guests, Dorothy Lick! Dorothy will be talking about 2024 Regional Member Meetings and other upcoming NDBA events.

Member Questions

Question #1: We are planning on funding the construction of some new grain bins, to secure our interest in the bins should we file a UCC1-A, or a UCC-1?

Response: Grain bins can be considered Fixtures or Equipment. So, it is a good idea to perfect with a UCC-1A Financing Statement and a Fixture Filing in the real estate records.

If the bins are on land owned by someone other than your Borrower/Debtor then you should also get a severance agreement and/or leasehold mortgage, as may be applicable.

Question #2: Are the UCC-1A and the Financing Statement two separate documents? Or is the UCC-1A filed in both?

Response: The UCC-1A and the Financing Statement are two separate documents. The UCC-1A is filed with the County Recorder's Office in the county where the grain bins are located. The Financing Statement is filed with the North Dakota Secretary of State. So, two separate documents will need to be filed/recorded to protect your interest in the grain bins.

Question #3: Our bank received a "garnishment of summons" but they also sent us "interrogatories and demand for production of documents in aid of the garnishment" where they ask for copies of statements, and deposits and checks going back to January 2024. We have never received this before when completing a garnishment, so we wanted to check to make sure that we can in fact give this information to them.

Response: A garnishment is called an "ancillary action", meaning it is another lawsuit and as such the Judgment Creditor has made the Bank a party to the lawsuit and can serve discovery on the bank. So, yes, a bank can respond to the discovery and provide the requested documentation as long as the garnishment was served properly. Check with your bank's counsel to ensure that the garnishment was in fact properly served; if service was not done in accordance with applicable law, your bank cannot disclose customer information.

The CFPB Releases and Revises Mortgage Servicing Rules and Loss Mitigation Framework with new Proposed Rule

On July 10, 2024 the Consumer Financial Protection Bureau ("CFPB") released a proposed rule which would amend Regulation X and its mortgage servicing provisions. If adopted, the proposed rule would require substantial changes to the now in effect default servicing requirements found in Regulation X, including the following:

1. Add additional procedural safeguards for borrowers as soon as they make a request for loss mitigation assistance;
2. Provide debtors with access to mortgage servicing communications in languages other than English;
3. Limit the fees a mortgage servicer can charge a borrower while they review options to assist the debtor.

The small servicer exception will apply to these proposed amendments. So, if your bank services 5,000 or fewer mortgages loans, inclusive of the mortgage loans owned or originated by an affiliate, these changes will not apply to your bank if adopted.

The CFPB is requesting comments on the proposed rule which are due on or before September 9, 2024.

To see the CFPB's proposed rule in its entirety please see the following: [Link](#)

Rohit Chopra Director of the CFPB, is in Favor of the CRA Applying to Credit Unions

During a House Financial Services Committee hearing, CFPB Director Rohit Chopra called for a "level playing field" by including credit unions under the Community Reinvestment Act (CRA) requirements. Currently, the federal CRA does not apply to credit unions, although some states have similar regulations, as summarized by the CFPB last fall. Rep. Emanuel Cleaver (D-Mo.) highlighted that banks have long demanded that credit unions face CRA-like obligations, given the disparity in regulatory status.

Chopra pointed out that many nonbank institutions, including credit unions, benefit from government support without equivalent CRA responsibilities. He noted the shift in mortgage lending predominantly to nonbank entities, underscoring the need for Congress or states to address this imbalance. Chopra mentioned that while banks and the CFPB may have their differences, there is consensus on the necessity for stricter CRA requirements for other mortgage lenders receiving government benefits.

The American Bankers Association (ABA) supports this extension, arguing that large credit unions, which receive significant government benefits, should also be required to prove their commitment to serving low-to-moderate-income communities. The ABA highlighted that when credit unions acquire community banks, the latter's CRA obligations and tax payments end, thus creating an uneven playing field.

FDIC to Revise Brokered Deposit Regulations

On July 30, 2024, Board of Directors for the FDIC approved a Notice of Proposed Rulemaking (the "Notice") proposing significant changes to the FDIC's brokered deposits rules, including the expansion of the definition of a "brokered deposit" to include many deposit placement arrangements. The American Bankers Association has expressed its disappointment with the Notice stating that it "would restrict access to sources of liquidity while penalizing banks for pursuing funding sources that enable them to meet the needs of their communities." The ABA is

also skeptical about the FDIC's plan to use the brokered deposits framework to regulate banking partnerships with crypto and other fintech companies.

Some of the key changes proposed by the FDIC include the following:

1. **Eliminates Exclusive Deposit Arrangement Carveout:** Entities exclusively partnering with one insured depository institution will no longer be exempt from being considered "deposit brokers," making their deposits brokered deposits.
2. **Revises "Deposit Broker" Definition:** The definition now includes entities receiving fees from an insured depository institution or customer for deposit placement services, impacting bank marketing practices.
3. **Changes Primary Purpose Exception Analysis:** The primary purpose exception now applies if the agent's primary purpose is substantially other than providing deposit-placement services or FDIC insurance, aligning with pre-2020 interpretations.
4. **Eliminates Enabling Transactions PPE:** The enabling transactions primary purpose exception is removed, and IDIs using this must apply under the general PPE process, as the FDIC sees no distinction between enabling transactions and accessing deposit insurance.

To see the Notice in its entirety please see the attached: [Link](#)

WARNING FOR GRAIN FARMERS: **SCALE TICKETS MUST BE CONVERTED WITHIN 30 DAYS**

When a grain warehouse receives grain, they must issue a uniform scale ticket for the load of grain received. The original is returned to the provider of the grain, and a copy is retained by the warehouse. But farmers do not realize these tickets must then be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within thirty days after delivery of the grain under N.D.C.C. § 60-02-11. **If the grain elevator goes insolvent and a farmer has failed to convert their ticket within thirty days, they will lose any of the protections offered by the grain warehouse insolvency trust fund or the contract indemnity fund.**

Credit Sale Contract Requirements

Credit sale contracts are written contracts which state the grain delivered to the warehouse will be sold more than thirty days after the delivery or release of the grain to the warehouse. A warehouse cannot purchase grain via a credit sale contract unless the contract contains the following information:

1. the seller's name and address
2. the condition of the grain
3. the amount and kind of the grain delivered
4. the price per unit or a basis of value
5. the date payment is to be made
6. the duration of the credit sale contract

7. a clear and prominent notice that the sale is not protected by bond coverage; and
8. **the contract must be in writing and signed (either a wet signature or electronic) by both parties.**

Any credit sale contracts that are not signed within thirty days will be treated as an unconverted scale ticket and will lose all the protections provided by the grain insolvency trust fund and the contract indemnity fund.

Trust Fund Established After Insolvency

When a grain warehouse goes insolvent the Ag. Commissioner will establish a trust fund. The trust fund is for the benefit of all the grain providers who converted their scale tickets in accordance with the above-mentioned requirements and offers no protections for any producer who has failed to convert their scale ticket within thirty days.

Farmers Can Now Get Bond Protection For Grain Values Over \$280,000

North Dakota law now requires grain elevators to offer bonds for deferred-payment contracts, (i.e. credit-sale contracts for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.) The elevator must now tell farmers they are able to purchase their own bond protection to cover any losses that exceed the amounts covered by the state's Credit Sale Indemnity Fund. The amount of loss protected by the Credit Sale Indemnity Fund is the lesser of 80% of the amount owed to a farmer who has properly converted their scale ticket or \$280,000. Therefore, farmers who are owed more than \$280,000 should purchase bond protection for the excess amount owed.

ABA Fraud Contact Directory

The ABA is inviting banks to participate in the ABA Fraud Contract Directory to efficiently resolve fraud claims, stating: "The ABA Check Fraud Claim Directory is now the ABA Fraud Contact Directory. This is now an expanded resource that helps banks connect with other institutions to resolve warranty breach claims for checks as well as claims for unauthorized and/or fraudulent transfers for wires, ACH, RTP, or FedNow. The directory of fraud contacts is searchable by bank name, city, state or FDIC number. Access to the database is only available to banks that provide their fraud contacts. ABA member- and non-member banks are invited to participate. The more institutions that get involved, the more helpful the directory will be for the industry."

To access the directory please sign in through the following: [Link](#)

Upcoming NDBA Events in 2024

NDBA has many exciting and informational events planned for 2024. Below are some special dates to mark on your calendars!

CONFERENCES

- **2024 Regional Member Meetings** | Register [Here](#)
 - Grand Forks, September 9, 2024;
 - Fargo, September 10, 2024;
 - Bismarck, September 11, 2024; and
 - Minot, September 12, 2024
- **NDBA Fraud Forum** | September 24, 2024 | Bank of North Dakota, Bismarck, ND | Register [Here](#)
- **2024 Ag Credit Conference** | October 2-3, 2024 | Hilton Garden Inn, Fargo, ND
- **Bank Management Conference** | Early 2025
- **2025 Tri-State Trust Conference** | April 22-24, 2025
- **2025 Quad States Annual Convention** | June 9-11, 2025 | Rapid City, SD

TRAINING

- **2024 Effective Leadership** | October 15-16, 2024 | Bismarck, ND | Register [Here](#)