
ASK KENNEDY

September 5, 2024

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- Things to Consider if Your Ag Debtor is in Distress
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Special Guest: Don Morgan, President, Bank of North Dakota

Please welcome this month's guest, Don Morgan! Don is the President of the Bank of North Dakota. He grew up on a cattle ranch in Hulett, Wyoming and met his wife, Shanda, at the University of Wyoming. Shanda grew up on [Black Leg Ranch](#) in McKenzie, North Dakota, and Don and Shanda moved back to North Dakota in 2000. Don began his banking career in 2001 as a credit review analyst. Prior to becoming President of Bank of North Dakota, Don served as a market president, vice president of credit administration, chief credit officer, chief financial officer, and chief executive officer of a North Dakota bank.

Member Questions

Question #1: How are garnishments in the name of an individual handled versus if the said named individual also has a business, but they are not listed on a garnishment? Then when there are business accounts, does it matter the type of business for example if it is a sole proprietor versus an LLC?

Response: **It is important to note that an entity created by law and registered with the Secretary of State (with the exception of partnerships) is separate from the individuals that own them. Therefore, a garnishment on an individual will not attach to an account owned by an LLC or a corporation.**

Brokered Deposits

On July 30, 2024, the Federal Deposit Insurance Corporation (FDIC) Board of Directors approved a [notice of proposed rulemaking](#) to revise the FDIC's safety and soundness rule on brokered deposits. In summary, the proposed rule would:

- Allow only insured depository institutions (IDIs) to file notices and applications for primary purpose exceptions (PPEs);
- Revise the “25 percent test” designated business exception for a PPE to be available only to broker-dealers and investment advisers and only if less than 10 percent of the total assets that the broker-dealer or investment adviser has under management for its customers is placed at one or more IDIs;
- Eliminate the enabling transactions designated business exception; and
- Clarify when an IDI, which has lost its agent institution status, can regain that status for purposes of the limited exception for reciprocal deposits.

On August 21, 2024, several trade associations representing the American banking industry submitted a [joint letter](#) raising the following concerns with the proposal:

- It would have a significant effect on banks, broker-dealers, investment advisers, third-party service providers, and customers, and would disrupt business arrangements made in reliance on the existing rules.
- It would undo recent rules that the FDIC adopted (in 2020) after an extended and robust fact-finding and rulemaking process.
- It does not provide adequate support for the change it seeks.
- It overlaps with the pending deposits RFI.

Therefore, these trades have requested either a withdrawal of the proposed rule or a release of relevant data and comment period extension.

The Protecting Consumers from Payment Scams Act

Congress has introduced a bill (S. 4943/H.R. 9303), also known as the Protecting Consumers from Payment Scams Act, which seeks to revise the Electronic Fund Transfer Act (EFTA) to provide additional consumer protection as follows:

- Protecting consumers from liability when they are defrauded into initiating a transfer to a bad actor;
- Requiring shared liability for unauthorized or fraudulent payments between a consumer’s financial institution and the financial institution that receives the funds, with discretion to include other firms that materially help facilitate the payments, incentivizing them to strengthen fraud prevention efforts;
- Clarifying that consumers are protected when they use bank wire transfers and electronic transfers authorized by telephone call;
- Ensuring that error resolution duties apply if the consumer’s account is frozen or closed, unless access has been denied due to court order, law enforcement, or the consumer obtained the funds through unlawful or fraudulent means; and

- Protecting consumers when they make a mistake, such as in amount or recipient, or if they don't receive goods or services purchased.

This bill is a significant change to the existing consumer regulations. As of present, EFTA and its implementing regulation, Regulation E, do not limit consumer liability for *authorized* transactions initiated by the consumer. These changes will limit consumer liability and place the burden on financial institutions.

The trade associations representing the American banking industry are [opposed to the bill](#) on the basis that it does nothing to stop the scams themselves while harming financial inclusion by reducing consumers' access to basic deposit accounts.

Things to Consider if Your Ag Debtor is in Distress

- Reminder: It's that time of year; make sure to check for ag liens.
- Ensure you send direct notice to buyers of farm products
- Homestead waivers are necessary for ag land.
- The redemption period for agricultural land in foreclosure is 365 days.

Update on Scale Ticket Conversion

In our last issue of Ask Kennedy, we outlined the updates to the statutes concerning grain warehousing and deposits and cited to N.D.C.C. Chapter 60-02. Update: the legislature has created a new chapter for the changes, so you can find the new law in [Chapter 04.1-58, N.D.C.C.](#) (Grain and Seed Warehouses). As a reminder, one of the changes requires a farmer to convert their scale ticket into cash, noncredit-sale contracts, credit-sale contracts or warehouse receipts within 30 days after delivery of grain or they will lose the protections provided by the grain warehouse insolvency trust fund or contract indemnity fund. [Attached is a sample of an informational sheet banks can provide to their farmer customers.](#)

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](#)

WARNING

GRAIN ELEVATOR SCALE TICKETS MUST BE CONVERTED WITHIN 30 DAYS FOR PROTECTION

All elevator scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within thirty days after you deliver the grain to the warehouse. N.D.C.C. § 4.1-58-15(1)(c). **Failing to convert a scale ticket, as described above, within 30 days of delivery, will result in a forfeiture of any trust fund or credit-sale contract indemnity fund protection.** N.D.C.C. § 4.1-58-15-(3).

If a scale ticket is converted, within thirty days after delivery, and the grain buyer becomes insolvent, growers are eligible to receive 80% of the value of the unpaid credit-sale contract(s), with a maximum payout of \$280,000 per insolvency. For example:

1. Contracts worth \$50,000 would result in a \$40,000 payout.
2. Contracts worth \$150,000 would result in a \$120,000 payout.
3. Contracts worth \$350,000 or more would result in the maximum payout of \$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.) a grain purchaser 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.

Here is an example: A producer wants to defer a \$100,000 payment and signs a contract to that effect. In the case that they would want bond protection the calculation would be as follows: $\$100,000 \times 80\% = \$80,000$ of protection from credit-sale contract indemnity fund. The \$20,000 not protected by the indemnity fund would be the logical amount to cover with a deferred payment bond. At a bond premium of \$10 per thousand it would cost the producer \$200 to purchase the bond. $\$20,000 \div 1000 = 20$. $20 \times \$10 = \200 . This is a simplified example and there may be more charges due to processing and handling.

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