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## NDBA Live March 5, 2025

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### Topics Covered:

- Special Guest: Rick Clayburgh | President and CEO, North Dakota Bankers Association
- Member Questions
  - Dormancy Fees
  - Abundance of Caution
  - Electronic Signatures
- [President Trump Orders Plan for a U.S. Sovereign Wealth Fund](#)
- [President Trump Nominates New CFPB Director](#)
- [Avoiding Another Synapse Bankruptcy](#)
- [Fed's Top Regulator: Fed Not Discouraging Banks from Serving Crypto Customers](#)
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### **Special Guest: Rick Clayburgh | President and CEO, North Dakota Bankers Association**

Please welcome this month's guest, Rick Clayburgh! Rick will be talking about the current legislative session. Be sure to keep track of important developments at [2025 Legislative Updates](#).

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### **Member Questions**

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**Question 1:** I am reaching out for your guidance on charging a monthly dormancy fee on deposit accounts due to inactivity. Would you be able to provide me some guidance on the state's requirements for implementing this fee?

*Example:* Monthly \$10 Dormant Account Fee assessed to accounts with no transaction activity for 12 months and with a balance of \$100 or less

**Response:** North Dakota has adopted the Revised Uniform Unclaimed Property Act, which provides the following with respect to dormancy charges:

1. A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:
    - a. An enforceable written contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and
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b. The holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

2. Charges authorized under this section may only be charged until the respective property is deemed abandoned.

N.D.C.C. 47-30.2-31.

I also encourage you to refer to your deposit account agreement to see what it says regarding fees.

Note that if you are contemplating changing the account terms you will need to comply with all notification requirements, and possibly obtain a signature for the change in terms.

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**Question 2:** Can a bank take an abundance of caution on a UCC filing? Or does that only exist with the real estate side of things.

Can an abundance of caution be taken if the loan is showing a collateral shortfall? For some reason I was thinking they couldn't but wanted to double check.

**Response:** I would say abundance of caution is only a real estate thing. Abundance of caution affects when an appraisal on real estate is required. The [Interagency Appraisal and Evaluation Guidelines](#) provide:

An institution may take a lien on real estate and be exempt from obtaining an appraisal if the lien on real estate is taken by the lender in an abundance of caution. This exemption is intended to have limited application, especially for real estate loans secured by residential properties in which the real estate is the only form of collateral. In order for a business loan to qualify for the abundance of caution exemption, the Agencies expect the extension of credit to be well supported by the borrower's cash flow or collateral other than real property. The institution's credit analysis should verify and document the adequacy and reliability of these repayment sources and conclude that knowledge of the market value of the real estate on which the lien will be taken as an abundance of caution is unnecessary in making the credit decision.

An institution should not invoke the abundance of caution exemption if its credit analysis reveals that the transaction would not be adequately secured by sources of repayment other than the real estate, even if the contributory value of the real estate collateral is low relative to the entire collateral pool and other repayment sources. Similarly, the exemption should not be applied to a loan or loan program unless the institution verifies and documents the primary and secondary repayment sources. In the absence of

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verification of the repayment sources, this exemption should not be used merely to reduce the cost associated with obtaining an appraisal, to minimize transaction processing time, or to offer slightly better terms to a borrower than would be otherwise offered.

In addition, prior to making a final commitment to the borrower, the institution should document and retain in the credit file the analysis performed to verify that the abundance of caution exemption has been appropriately applied. If the operating performance or financial condition of the company subsequently deteriorates and the lender determines that the real estate will be relied upon as a repayment source, an appraisal should then be obtained, unless another exemption applies.

*See also [FAQs on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines](#).*

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**Question 3:** We were curious if anything had changed recently on regulations or legalities or liabilities when it comes to doing certain documents with Electronic Signatures. Currently we have some documents we consider that are acceptable to use it, but most we do not.

**Response:** The main laws governing electronic signatures are the federal Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA) (adopted by North Dakota as [Chapter 9-16 of the North Dakota Century Code](#)).

While ESIGN and UETA generally provide for the validity and enforceability of electronic signatures, they do not cover the following, in relevant part:

- Contracts governed by the Uniform Commercial Code
- Court orders or notices, or official court documents
- Any notice of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual
- Any notice of the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities)

*See [15 U.S.C. § 7003](#); [N.D.C.C. § 9-16-02](#). ESIGN and UETA also have very specific provisions and requirements governing “transferable records,” which are essentially electronic promissory notes. See [15 U.S.C. § 7021](#); [N.D.C.C. § 9-16-15](#).*

As far as updates, there have not been many major changes. ESIGN was passed in 2000 and remains largely unchanged. The UETA was adopted in

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**North Dakota in 2001. During the 2019 North Dakota Legislative Session, UETA was amended to address blockchain technology and smart contracts. See [N.D.C.C. § 9-16-19](#).**

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### **President Trump Orders Plan for a U.S. Sovereign Wealth Fund**

On February 3, 2025, President Trump signed an Executive Order Calling for the creation of a United States Sovereign Wealth Fund. A sovereign wealth fund is a government-owned investment vehicle used by countries (and within certain states in the United States) to manage surplus financial assets. The Executive Order directs the Secretary of the Treasury and Secretary of Commerce to deliver a plan for creation within 90 days. [Link](#).

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### **President Trump Nominates New CFPB Director**

On February 11, 2025, President Trump nominated Jonathan McKernan to be the new Director of the Consumer Financial Protection Bureau (CFPB). McKernan formerly served as a member of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC). Until McKernan is confirmed, the agency will likely continue to be led by Acting Director Russell Vought.

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### **Avoiding Another Synapse Bankruptcy**

The collapse and bankruptcy of fintech middleware provider Synapse Financial Technologies exposed significant gaps in consumer protections for account holders relying on fintech companies.

Fintech companies typically partner with FDIC-insured banks, which hold the money for the fintech company's customers in FBO accounts. This arrangement allows fintech companies to manage funds while storing them elsewhere. Fintechs rely on middlemen, like Synapse, to perform the bookkeeping. However, Synapse was not maintaining an accurate and up-to-date ledger, creating uncertainty about customer fund allocations.

In response to the Synapse bankruptcy, [FDIC proposed a new rule](#) aimed at strengthening recordkeeping requirements for deposits received from third parties. The rule seeks to ensure that banks can accurately identify the true owner of deposits placed in a bank by a third party so that the banks are able to provide the depositor their funds even if the third party fails.

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### **Fed's Top Regulator: Fed Not Discouraging Banks from Serving Crypto Customers**

During a banking regulation conference on February 27, Michael Barr, Vice Chair for Supervision at the Federal Reserve, clarified that the Fed neither prohibits nor discourages banks from serving the crypto industry. View the transcript of Barr's speech [here](#).

In 2022, the North Dakota Department of Financial Institutions released guidance for digital assets/virtual currency, which can be viewed here: <https://www.nd.gov/dfi/news/guidance-digital-assetsvirtual-currency>.

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### **Another Update on the Corporate Transparency Act**

According to the [FinCEN website](#), beneficial ownership reporting requirements are back in effect with a new deadline of March 21, 2025. However, on February 27, 2025, [FinCEN issued a release](#) stating “it will not issue any fines or penalties or take any other enforcement actions against any companies based on any failure to file or update beneficial ownership information (BOI) reports pursuant to the Corporate Transparency Act by [March 21, 2025].” FinCEN intends to issue an interim final rule that extends BOI reporting deadlines no later than March 21, 2025.

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### **Upcoming Events**

NDBA has many exciting and informational events planned for 2025. Below are some special dates to mark on your calendars!

- **Breaking into Banking 201: Analyzing Repayment Sources** | March 26, 2025 | Virtual
- **Washington Summit** | April 7-9, 2025 | [Details](#)
- **2025 Tri-State Trust Conference** | April 22-24, 2025 | [Online Registration](#)
- **Opening New Accounts Seminar** | April 23, 2025 | Fargo, ND
- **Opening New Accounts Seminar** | April 24, 2025 | Bismarck, ND
- **Loan Documentation, Liens and Collection: What Bankers Need to Know** | May 20, 2025 | Holiday Inn | Fargo, ND
- **Loan Documentation, Liens and Collection: What Bankers Need to Know** | May 21, 2025 | Radisson Hotel | Bismarck, ND
- **2025 Dakota School of Banking** | June 1-6, 2025 | Jamestown, ND
- **2025 Quad States Annual Convention** | June 8-10, 2025 | Rapid City, SD | Full Agenda and Registration Materials Coming in March