
NDBA Live

May 7, 2025

Topics Covered:

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DISCLAIMER: THESE MATERIALS PROVIDE GENERAL INFORMATION AND ARE INTENDED FOR EDUCATIONAL PURPOSES ONLY. THESE MATERIALS DO NOT PROVIDE, NOR ARE THEY INTENDED TO SUBSTITUTE FOR, LEGAL ADVICE.

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 end of the 2025 Legislative Session and what new laws we can expect, as well as what did not pass.

Member Questions

Question 1: In North Dakota, can a Personal Representative (PR) grant access to someone else to enter and clean out a safe deposit box? For example, if the PR doesn't live locally, can they request and approve another person to enter and take the contents of the box?

And, related - can or should the box be inventoried with a bank representative present?

Response: The answer to your question will depend on if the decedent customer was a resident of North Dakota. If not, then the Uniform Probate Code dealing with the Powers of a Foreign Personal Representative is applicable and will require an Affidavit in compliance with North Dakota Century Code Chapter 30.1-24. [North Dakota Century Code t30.1c24](#)

However, if the Personal Representative was appointed by a North Dakota Court then Chapter 30.1-18 is applicable. With that said, be sure that you've seen the actual Order appointing the Personal Representative to see what powers the P.R. has. [North Dakota Century Code t30.1c18](#)

Chapter 30.1-18, specifically 30.1-18-15(21) gives the Personal Representative the power to Employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties, and act, without independent investigation, upon their recommendations. Instead of acting personally, the personal representative may employ one or more agents to perform any act of administration, whether or not discretionary.

It would be a good idea to verify that the PR has given an agent the power to assist with the collection of items, such as a Limited Power of Attorney to act on the PR's behalf for a specific purpose.

Then I do think it would be a good idea to inventory the contents before anything is taken out of the safe deposit box.

Question 2: I have a question in regards to garnishments. According to the Century Code it states "bank needs to specifically name a president or vice president to be served" I am interpreting this to mean a singular person. Is it just one person to be named or can the bank name more than one person?

Response: I think the bank can name more than one president or vice president as long as the individuals are specifically named.

Question 3: The topic today is on collateral real estate mortgages, specifically for an agricultural producer I am working with. My question is:

- What is a collateral real estate mortgage and how is that different than a regular mortgage?
- What benefits does it have over a regular mortgage or even an abundance of caution?
- How do banks need to file or handle these to be in compliance with the ND century code?

Response: You had asked about Collateral Real Estate Mortgages and what makes them unique from regular mortgages. Below is a general discussion about what a Collateral Real Estate Mortgage is and what it requires and how it can be extended vs a standard Mortgage which can include a much longer maturity date but can only be extended by agreement of the parties. Note, however that a collateral real estate mortgage can not be extended past 10 years without an agreement of the parties and in such circumstance might not be enforceable against intervening lien holders just because of its intended limitations.

Note, that many, many years ago (before 2000) there were statutory restrictions of using a regular mortgage for lines of credit and you could only use a CREM but that is no longer the case.

See a more specific discussion about CREM's below.

1. CREMs are required to be identified as such in the heading and with special clause in the mortgage itself.

The CREM is authorized in North Dakota Century Code section 35-03-17. The mortgage must be identified at the heading with capital letters: "MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE" The CREM must also have the specific clause as follows in printed or typed capital letters: "THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO NORTH DAKOTA CENTURY CODE CHAPTER 35-03". If these provisions are a part of the mortgage then it will be a CREM under ND law.

2. CREMS have very specific rules on how they must be continued in order to remain effective.

Once a CREM is filed it only has a specific, relatively short, time frame within which it is effective as a mortgage. Failure to timely extend the effectiveness of the CREM results in the loss of security in the property to the lender. Additionally, the entire debt may very well become non-collectible even from a solvent borrower because of the operation of North Dakota's anti-deficiency statutes. *See Gust v. Peoples and Enderlin State Bank*, 447 N.W.2d 914 (N.D. 1989). To make matters more troubling, the dates that various actions must be taken are not all uniform. I will detail the process for extending the effectiveness in a later section of the memo.

The two different scenarios are provided for below.

- a. *CREM with stated maturity date less than five years* – the CREM is effective until the stated maturity date and thereafter for a period of 60 days.
- b. *CREM has no stated maturity date, is payable on demand, or has stated maturity date of more than five years* – the CREM is effective for five years from the date of filing the CREM and thereafter for a period of 60 days.

3. CREMs must be extended through the filing of an addendum.

The statutes provide that the effectiveness of the CREM can be extended through the filing of an addendum to the CREM. The addendum only has to be signed by the mortgagee (i.e. lender) if it is filed solely to extend the effectiveness period. If other aspects of the CREM are being modified that should be reflected in a mortgage modification signed by the mortgagor and mortgagee that also specifically makes reference to the extension of the effectiveness of the CREM. There are two scenarios for the window within which to file the addendum.

- a. *CREM with stated maturity date less than five years* – addendum must be filed no earlier than 6 months prior to stated maturity date and no later than 60 days after stated maturity date.
- b. *CREM has no stated maturity date, is payable on demand, or has stated maturity date of more than five years* – addendum must be filed no earlier than 6 months prior to date of filing of CREM and no later than 60 days after date of filing.
- c. *Subsequent addendum* – additional addendum would be needed to continue effectiveness for subsequent five-year periods.
 - i. *CREM with stated maturity date less than five years* – subsequent addendum must be filed no earlier than 6 months prior to applicable five-year period after stated maturity date and no later than 60 days after applicable five-year period after stated maturity date.
 - ii. *CREM has no stated maturity date, is payable on demand, or has stated maturity date of more than five years* – subsequent addendum must be filed no earlier than 6 months prior to applicable five-year period after original date of filing CREM and no later than 60 days after applicable five-year period after original date of filing CREM.
 - iii. *ISSUE: CREM with stated maturity date more than five years* you may consider filing subsequent addendum at both the five year from filing period AND the five year from maturity date period so there is not a question about the continued effectiveness.
 - i. Example: CREM dated 11/1/2018, filed on 11/1/2018, with a stated maturity date of 6/1/2025. You should file first addendum in window from 5/1/2023 until 12/31/2023 because stated maturity date is more than 5 years. You should file an additional addendum in window from 1/1/2025 until July 31, 2025 because the maturity date.

4. Other limitations on modifications:

A Modification of Mortgage must identify the parties to the agreement and the date of the Modification. The date of the Mortgage being modified along with the date of its recording with the County Recorder and the assigned Document Number, along with recording data for any previously filed Modification of Mortgage should be included. A legal description of the encumbered property must be included to ensure that it is properly recorded against the property. The nature of the Modification should be clearly expressed to include any change in the interest rate of the underlying obligation, any change in payment structure, and any change to the maturity

date of the underlying obligation. In order to be recorded, the Modification must be in affidavit form, meaning that the signatures of the grantors must be notarized. The maturity date of a Mortgage may be extended by such a Modification but North Dakota law limits the length of the extension of the validity of a Mortgage to not more than ten years beyond the original expiration date of the originally recorded Mortgage. (N.D.C.C. 35-03-15(5)).

Below is a link to the North Dakota Century Code Chapter 35-03 Mortgage of Real Property outlining the statutory requirement and limitations for each type of Mortgage.

[North Dakota Century Code t35c03](#)

CFPB Continues to Dismiss Prior Lawsuits

The CFPB continues to drop lawsuits commenced under the Chopra administration, including lawsuits against:

- ***Fintech Company SoLo Funds:*** Alleged that fintech company offering small-dollar, short-term loans misled borrowers about the total cost of its loans. [View Complaint.](#)
 - ***Townstone:*** CFPB is now seeking to vacate the settlement of a case against Townstone which had alleged that the firm's radio advertisements and commentary had discouraged prospective applicants in majority- and minority-Black neighborhoods from applying for mortgages. [View Complaint.](#) [The CFPB has since labeled the case against Townstone abusive, unjust, and "a seven-year harassment saga."](#)
 - ***TransUnion:*** Alleged that the company misled consumers into enrolling in paid credit monitoring services and made it difficult for them to cancel. [View Complaint.](#)
 - ***Lease-to-Own Financer Acima:*** Alleged that the company misled consumers about the cost and nature of its financing agreements. [View Complaint.](#)
 - ***Reliant Holdings, Inc.:*** Alleged that the named defendants unlawfully advertised a high-cost, limited-use membership program to subprime consumers. [View Complaint.](#)
 - ***Money Transmitter MoneyGram:*** A lawsuit against nonbank remittance transfer providers alleging violations of the Remittance Transfer Rule and Regulation E. [View Complaint.](#)
 - ***Student Loan Trusts:*** Alleged that the trusts had engaged in unlawful debt collection litigation tactics via third-party contractors. [View Complaint.](#)
 - ***Subprime Auto Lender:*** Alleged that the auto lender's indirect lending model obscured finance charges and incentivized deals to inflate loan amounts. [View Complaint.](#)
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Fraud Awareness

According to the ABA, fraud losses in the U.S. reached more than \$12.5 billion in 2024, and more than 1 in 3 Americans have experienced financial fraud or a scam since January 2024. ABA's website also notes that 9 in 10 consumers say their bank takes proactive steps to prevent them from fraud.

In honor of both Mother's Day and Older Americans Month, we are taking this opportunity to remind North Dakota banks of their options for suspected financial exploitation of vulnerable adults, which includes customers 65 and older or customers 18 and older with substantial mental or functional impairments.

Under Chapter 6-08.5 of the North Dakota Century Code, banks may refuse financial transactions or hold financial transactions on account if they have a good faith belief to suspect financial exploitation. If a bank does choose to do so, it must make a reasonable effort to notify, orally or in writing, one or more parties authorized to transact business on the account and, if the incident involves a vulnerable adult, must report it to the department of human services.

Washington D.C. Summit Update

Many of your colleagues went to Washington D.C. for the 2025 Washington Summit; Rick will discuss what they accomplished on your behalf. You can view 13 video sessions from the 2025 Summit at <https://www.aba.com/training-events/conferences/washington-summit/look-back>, and listen to people like acting FDIC Chairman Travis Hill, Secretary of the Treasury Scott Bessent, and Senate Banking Committee Member Mark Warner.

Loan Documentation and Loan Enforcement Seminar

Don't miss the Loan Documentation and Loan Enforcement Seminar taking place at the end of this month! Tracy Kennedy and Ryan Ames will be in Fargo and Bismarck to discuss key loan documents and provisions, and what banks need to know about enforcement.

Registration details for Fargo:

https://members.ndba.com/eweb/DynamicPage.aspx?webcode=EventInfo&Reg_evt_key=7fb70040-fa59-4d75-b3ab-620c6f245ca4&RegPath=EventRegFees.

Registration details for Bismarck:

https://members.ndba.com/eweb/DynamicPage.aspx?webcode=EventInfo&Reg_evt_key=13e03847-1ee8-4c9b-9fbf-65310ec249c3&RegPath=EventRegFees.

Upcoming Events

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

- **Loan Documentation and Loan Enforcement: What Bankers Need to Know** | May 20, 2025 | Holiday Inn | Fargo, ND



- **Loan Documentation and Loan Enforcement: 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