
NDBA Live

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Special Guest: Rick Clayburgh | President and CEO, North Dakota Bankers Association

Please welcome this month's guest, Rick Clayburgh! He will be talking about the 2026 Washington Summit.

Member Questions

Question 1: I have a check that was altered. I did return it as altered/fictitious but it was an untimely return, is there anything else we can do?

Response: See attachment: [Forged or Altered Check – Banker Step-by-Step Guidance](#).

Question 2: In a (commercial) foreclosure, does ND have a statutory dollar amount for where an appraisal is required upon foreclosure?

Response: Great question. No, but you do need to get an appraisal if you are going to seek a deficiency judgment. Warning, you cannot get a deficiency judgment on a residential first mortgage. Warning, foreclosure on Ag property has its own requirements.

32-19-06.1. Deficiency judgments on commercial real property.

In an action involving the foreclosure of a mortgage on commercial real property, the plaintiff shall state in the pleading whether a deficiency judgment will be sought and if sought shall identify the parties claimed to

be personally liable and demand a deficiency judgment against those parties. Within twenty days after the completion of the appraisal, the appraiser shall provide the plaintiff and file with the clerk of court a written report, including the fair market value of the property. The plaintiff shall mail a copy of the appraisal to a party that may be personally liable at the party's last-known residences or business addresses by first-class mail. At the time of the entry of the judgment, the court shall include in its findings of fact the fair market value of the property and the amount of any prior liens on the property. If the fair market value and the amount of any prior liens are less than the amount found to be due to the plaintiff, the court shall identify each person who is liable for any deficiency after the sheriff's sale. The foreclosure judgment must be the balance then due and owing on the mortgage, plus costs. Upon entry of an order confirming the sheriff's sale, the clerk of court shall note the amount bid at the sheriff's sale, less the cost of the sheriff's sale as a credit on the foreclosure judgment, which credit may not be less than the fair market value established by the court. Any amount actually paid in excess of the foreclosure judgment constitutes surplus payable to the debtor pursuant to section 28-23-09. The clerk shall enter a money judgment to the extent of the deficiency against those parties found by the court to be personally liable, then the plaintiff may pursue the same remedies to collect the deficiency judgment as are available to collect other money judgments. The deficiency judgment must be for the entire amount found to be due the foreclosing party in the foreclosure judgment, together with interest at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court. In addition to the appraisal, the court in its determination of the fair market value of the property may consider affidavits from the parties or other proof of paramount liens and other matters that may affect the value.

32-19-06.2. Deficiency judgments on agricultural land.

If the complaint in an action to foreclose on agricultural land of more than forty acres [16.19 hectares] has provided for a deficiency judgment, a separate action for the deficiency must be brought within ninety days after the sheriff's sale. In the separate action, a deficiency judgment may be entered, but may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the mortgaged premises. There is not a presumption that the premises sold for the fair market value. The court may not render a deficiency judgment unless the fair market value as determined by the court is less than the sum adjudged to be due and costs of the action. Fifteen days' notice of the time and place for determination of fair market value must be given to all parties against whom personal judgment is sought. Any party may offer evidence to show the fair market value even though that party may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment obtained may only be enforced by execution within three years from the date of entry of the judgment. If the

judgment is not collected within three years, the judgment expires. As used in this section, "fair market value" means the most probable price that real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

I hope you find this helpful, but please note that each foreclosure is different and you need to ensure that your legal counsel is conducting your foreclosure appropriately.

Agencies Announce Withdrawal of Principles for Climate-Related Financial Risk Management

On October 16, 2025, the federal bank regulatory agencies announced they are withdrawing the interagency Principles for Climate-Related Financial Risk Management for Large Financial Institutions. The regulators explained that they no longer view a separate climate-risk guidance document as necessary because the existing safety and soundness standards already require supervised institutions to maintain effective risk-management practices aligned with their size, complexity, and activities. In particular, institutions are expected to consider all material financial risks and to ensure resilience against a broad range of risks. The notice will be published in the Federal Register and the withdrawal becomes effective immediately.

Texas Bankers Association Urges Deposit Insurance Reforms

The spring 2023 collapses of Silicon Valley Bank and Signature Bank sparked a nationwide banking crisis that left regulators rushing to stabilize public confidence. Widespread uncertainty about deposit insurance coverage triggered anxiety and potential deposit flight from smaller institutions. Although the crisis eventually eased, the underlying issues remain unresolved. With social media and 24-hour news increasing pressure on regulators and banks, the Texas Bankers Association (TBA) is urging proactive reform to prevent another confidence crisis.

In meetings with FDIC Acting Chairman Travis Hill, TBA has advocated for new emergency provisions that would provide temporary, Transaction Account Guarantee (TAG)-like protections during national or economic emergencies. These measures would ensure full deposit coverage for community and regional banks, not just “systemically important” institutions. TBA argues that every community and regional bank is systemically important to the areas it serves and that banks paying insurance premiums deserve certainty about coverage in times of crisis. The association supports creating an apolitical, emergency backstop to maintain depositor confidence while broader deposit insurance modernization efforts take shape. TBA commended Acting Chairman Hill’s focus on the FDIC’s core mission and expressed its commitment to working with regulators and lawmakers to develop reforms that strengthen depositor protections across all bank sizes.

U.S. Seizes \$15 Billion in Record Forfeiture Case

The U.S. Department of Justice has seized \$15 billion in bitcoin, the largest asset forfeiture in its history, in connection with an alleged global fraud and money laundering operation led by

Cambodian national Chen Zhi, also known as “Vincent.” Zhi, chairman of the Prince Holding Group, was indicted in the Eastern District of New York for wire fraud and money laundering conspiracy. According to the indictment, Prince Group, which claimed to operate legitimate businesses across more than 30 countries, was actually one of Asia’s largest transnational criminal organizations. The conglomerate allegedly laundered proceeds from massive crypto scams, using forced labor, physical coercion, and torture in compounds where victims were made to operate fraudulent schemes. The criminal network allegedly funneled illicit funds through crypto exchanges and mining operations in Laos, China, and Texas to create “clean” bitcoin and other digital assets. In coordination with the DOJ, the Department of Treasury designated Prince Group as a transnational criminal organization and sanctioned Zhi, his associates, and related entities. If convicted, Zhi faces up to 40 years in prison.

Nonbank Financial Institutions and Private Credit

Private credit refers to loans made directly between borrowers and nonbank financial institutions (NBFIs) such as private equity firms, pension funds, insurance companies and sovereign wealth funds. The market has grown rapidly in the United States, approaching \$1.3 trillion and representing roughly 30% of debt issued by below investment grade companies. These loans are typically not traded on public markets, carry higher interest rates and often provide stronger investor protections and priority in a borrower’s capital structure. Growth has been driven by borrowers’ preference for tailored terms, faster execution and lower disclosure requirements, along with banks’ retreat from certain lending markets.

The expansion of private credit affects financial stability and monetary policy. Many loans are floating rate, so changes in policy interest rates quickly influence borrowing costs. Banks’ growing exposures to NBFIs create potential spillovers into the banking system. While private credit offers flexibility and can offset reductions in bank lending, it also raises risks of looser underwriting standards, misallocation of credit and complex interconnections that are harder to monitor, particularly since NBFIs lack access to central bank liquidity support. Overall, private credit is becoming a major channel for corporate borrowing, reshaping the credit landscape and posing new considerations for financial oversight.

Stablecoins vs. Tokenized Deposits

Banks evaluating how to enter the digital asset space are weighing two options: stablecoins or tokenized deposits. Both enable real-time settlement and programmable transactions, but they differ in readiness and interoperability.

Stablecoins, especially fully reserved dollar-backed versions under emerging federal oversight, are already in active use. They can move easily across wallets, blockchains, and borders, supporting open ecosystems for payments, remittances, and decentralized finance innovation.

Tokenized deposits, on the other hand, remain tied to individual institutions’ balance sheets and typically function only within closed networks or banking consortiums. Without broad interoperability standards, they risk replicating traditional siloed systems rather than transforming them.

For most banks, stablecoins offer a faster, lower-barrier entry into digital finance. They allow institutions to experiment, engage customers, and stem deposit outflows with less technical overhaul and clearer regulatory guidance. Tokenized deposits are likely to gain importance over time for interbank settlement and liquidity management, but stablecoins currently provide the more practical starting point.

Upcoming Events

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

- **NDBA Bank Management Conference** | February 13 & 14, 2026 | Fairmont Scottsdale Princess, Scottsdale, AZ |
 - **2026 Washington Summit** | March 9-11, 2026 | Marriott Marquis, Washington, DC |
 - **Dakota School of Lending Principles** | April 7-10, 2026 | Ramkota Hotel, Pierre SD |
 - **Opening New Accounts Seminars** | April 22 & 23, 2026 |
 - **Tri-State Trust Conference** | April 27-29, 2026 | Holiday Inn, Fargo |
 - **Dakota School of Bank** | May 31, 2026 – June 5, 2026 | University of Jamestown, Jamestown, ND |
 - **NDBA/SDBA Annual Convention** | June 15-17, 2026 | Bismarck, ND |
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Forged or Altered Check – Banker Step-by-Step Guidance

This step-by-step guidance outlines a procedure for banks handling check fraud incidents, including forged and altered checks, under North Dakota and federal law.

Step 1 — Intake & Immediate Triage (Right Now)

- Authenticate the customer and verify account, check number(s), and amount(s).
- Open a fraud case, preserve images and physical checks, and flag related items.
- Place stop payments or temporary holds as allowed under policy, if applicable.
- If still in process, coordinate an immediate return before the midnight deadline. ([N.D.C.C. § 41-04-30](#); [12 C.F.R. § 229.31](#)(b)(1).)
 - If the paying bank returns the check after the midnight deadline, the depository bank may return the check to the paying bank as a late return.

Step 2 — Evidence & Customer Paperwork (Same Day–Next Business Day)

- Provide the customer with an Affidavit of Forgery or Alteration to complete.

Step 3 — Forensic Review (Same Day–2 Business Days)

- Compare suspect check to known good checks and confirm stock and signature.
- Examine for alteration signs like overwriting, erasures, or ink mismatch.
- Verify routing numbers and confirm issuance with the purported payor bank.

Step 4 — Liability Analysis (NDCC/UCC + Deposit Agreement)

- Determine whether customer reported the forgery or alteration within the time required by your account agreement. (See [N.D.C.C. § 41-04-37](#).)
- Determine the type of fraud that occurred.
 - Alteration is defined in [N.D.C.C. § 41-03-44](#).
 - Counterfeit is differentiated from alteration. A counterfeit check is a *copy* of a check, whereas an alteration occurs when there is an alteration to the *original* check.
- Depository bank liable for breach of warranty if check is altered. ([N.D.C.C. § 41-04-19](#); [N.D.C.C. § 41-04-20](#).)
- Depository bank liable for breach of warranty if endorsement is forged or unauthorized. ([N.D.C.C. § 41-04-19](#).)

*For determination of liability, make sure to discuss the issue with counsel.

Step 5 — Returns, Warranty Claims, and Recovery

- Return the item within deadlines if applicable ([N.D.C.C. § 41-04-30](#); [12 C.F.R. § 229.31](#)(b)(1)).

- If outside the deadline, you may still pursue a breach of warranty claim against the depository bank, if applicable. The midnight deadline does not apply to a breach of warranty claim. (See [N.D.C.C. § 41-04-30](#).)
 - Send an image of the check, affidavits from your customer, and a summary of the breach.
 - You should make a breach of warranty claim within 30 days of discovery of the issue or as soon as practicable thereafter. Making the claim after 30 days may reduce the bank's recovery. (See [N.D.C.C. § 41-04-20](#)(5).)
 - In any case, you must commence an action under Article 4 within 3 years after the cause of action accrues. ([N.D.C.C. § 41-04-11](#).)

Step 6 — Final Determination & Customer Outcome

- Issue a decision letter explaining findings and outcome.
- If denying reimbursement, cite contract and statutory basis clearly.

Step 7 — SAR / Law-Enforcement Coordination (As Needed)

- Have BSA Officer evaluate whether a Suspicious Activity Report (SAR) is required under FinCEN thresholds. (See FinCEN SAR Electronic Filing Instructions [here](#).) [It could help prevent fraud](#).

Step 8 — Post-Incident Controls & Customer Prevention

- Conduct root-cause analysis to identify control failures.
- Update training, procedures, and detection rules.
- Establish preventative controls such as Positive Pay for commercial accounts.

Additional Guidance:

- [American Bankers Association Check Fraud Resource](#)
- [OCC Fraud Risk Management Principles](#)
- [Federal Reserve Scams and Check Fraud Mitigation Toolkits](#)