
ASK KENNEDY

April 5, 2023

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Special Guest Becca Vogel, Bravera Bank

Our Special Guest this month is Becca Vogel. She will be talking about her recent trip to the ABA Washington Summit and what she learned from the summit, as well as what she learned from talking with our North Dakota Congressional Delegation. Thank you, Becca!

Member Questions

Question #1: What is the current status of ND hemp law in relation to federal law? Has the legality of hemp in North Dakota undergone any recent changes?

Response: **Hemp production in North Dakota is currently authorized by North Dakota Century Code [Chapter 4.1-18.1](#). There is currently a bill (S.B. 2096, latest version [here](#)) which seeks to substantially amend the hemp chapter/program. The bill proposes to add various amendments restricting the sale and distribution of hemp commodities and products. It further provides for receiverships and penalties. S.B. 2096 was passed in the Senate on January 23, 2023, and introduced in the House on February 16th.**

Under the current law, banks should be most concerned with dealing with producers of hemp (their compliance with licensing and growing requirements) and sellers of CBD products (compliance with the FDA). This bill essentially works to ensure compliance with the FDA, providing more specific considerations for banks when dealing with retailers of hemp products to ensure that they are not acting in violation of North Dakota law, which would raise BSA/AML concerns.

In conclusion, hemp is legal in North Dakota. However, the statutes governing hemp are up for amendment in this legislative session. S.B. 2096 should be monitored to determine whether banks will have additional considerations in dealing with retailers.

Note: If you haven't seen it yet, [FinCEN Guidance Regarding Due Diligence Requirements under the Bank Secrecy Act for Hemp-Related Business Customers](#) is a great source for your BSA Policies and Procedures.

Question #2: What are the laws and/or rules regarding joint bank accounts and removing an owner?

Example: We have an account that has a mother and son on it, but the son is now an adult and they both want the mother to be taken off the account. What is the correct and/or acceptable practice for doing so?

Response: It really depends on the type of account. A UTMA account has more restrictions than a standard account held by a parent and a child who turns 18. UTMA accounts are held by the guardian for the benefit of the minor may be required to be held even up to age 21 depending on the circumstance. In all cases of the UTMA account the now adult minor cannot change the terms of the account the adult must release the funds to the now grown minor. The North Dakota Statutes on Uniform Transfers to Minors can be found at the link below.

<https://www.ndlegis.gov/cencode/t47c24-1.pdf>

As far as other accounts that are held jointly, you should check your deposit account agreement for terms and conditions but generally a joint account holder cannot remove the other holder, they can however withdraw funds and open a new account.

It is important to note that the facts of each situation can be quite different and my response should not be construed as legal advice.

CFPB Issues Guidance on Home Appraisal Discrimination

The CFPB recently announced it has filed a [statement of interest](#) in the United States District Court for the District of Maryland in the case of *Connolly & Mott v. Lanham et al.* In that case, a black couple sought to refinance their mortgage with loanDepot. The couple claims that when the appraisal company visited the home for the appraisal, the couple and their children, all of whom are black, were present, and the home included family photos and other décor making it clear a black family lived there. A few days after the appraisal, the family received a call from the lender denying the application because the appraisal valued the home at only \$472,000.

Months later, the family applied for a new loan from a new mortgage lender. This time, they decided to “whitewash” their home by replacing family photographs with photographs borrowed from white friends and colleagues, replacing their artwork with stock images featuring white subjects, and having a white colleague stand in for them during the appraisal. The new appraisal appraised their home at \$750,000. While they were then able to refinance their loan based on that appraisal, the interest rates at the time were higher than when they first applied. The family sued loanDepot, as well as the appraisal company and its’s owner, for violating the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA), and other federal and state civil rights laws. loanDepot is fighting the case by arguing it can’t be held liable for making a lending decision based on a discriminatory appraisal because the alleged discrimination was committed by a third-party appraiser.

On March 13, 2023, the CFPB supplemented its statement of interest by producing an article detailing bias in home appraisals. In this article, the CFPB explains that both the ECOA and FHA apply to home appraisals and, as such, appraiser conduct and the use of appraisals by mortgage lenders must be free from discriminatory conduct. The CFPB also stated that they believe mortgage lenders can be liable under the FHA and ECOA for relying on discriminatory appraisals, as the law is clear that mortgage lenders cannot take race, sex or any other prohibited bases into account when evaluating the creditworthiness of an applicant. Lastly, lenders should take note that the CFPB further stated that lenders cannot rely on an appraisal if they knew, *or should have known*, that the appraisal was discriminatory; this determination places a necessity on lenders to put in place policies that ensure every lending decision is being reviewed carefully for possible discrimination.

FinCEN issues an Alert on Increasing Mail Theft

[FinCEN recently issued an alert](#) in light of what it’s seeing as a nationwide surge in check fraud schemes involving the fraudulent negotiation of checks stolen from the U.S. Mail. The alert gives the following red flags which could signify theft-related check fraud:

- Non-characteristic large withdrawals on a customer’s account via check to a new payee.
 - Customer complains of a check or checks stolen from the mail and then deposited into an unknown account.
 - Customer complains that a check they mailed was never received by the intended recipient.
 - Checks used to withdraw funds from a customer’s account appear to be of a noticeably different check stock than check stock used by the issuing bank and check stock used for known, legitimate transactions.
 - Existing customer with no history of check deposits has new sudden check deposits and withdrawal or transfer of funds.
 - Non-characteristic, sudden, abnormal deposit of checks, often electronically, followed by rapid withdrawal or transfer of funds.
 - Examination of suspect checks reveals faded handwriting underneath darker handwriting, giving the appearance that the original handwriting has been overwritten.
 - Suspect accounts may have indicators of other suspicious activity, such as pandemic-related fraud.
 - New customer opens an account that is seemingly used only for the deposit of checks followed by frequent withdrawals and transfer of funds.
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- A non-customer that is attempting to cash a large check or multiple large checks in-person and, when questioned by the financial institution, provides an explanation that is suspicious or potentially indicative of money mule activity.
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North Dakota Legislative Session: Banking Review

North Dakota House Bill 1082 – Electronic Records

On March 20, 2023, the Governor of North Dakota signed into law North Dakota HB 1082 which, most importantly, changes the definition of money by excluding an electronic record that is a medium of exchange that existed before being adopted or authorized by the government. Essentially, the passage of this bill excludes cryptocurrency as money, making it much more difficult to use cryptocurrency in the state. [A copy of the bill text can be found here.](#)

North Dakota Senate Bill 2119 – Money Transmitters

On March 15, the governor signed SB 2119, which revises provisions related to money transmitters. The act, among other things, provides that a “person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under this chapter.” The provision does not apply to a “person that is an authorized delegate of a person licensed under this chapter acting within the scope of authority conferred by a written contract with the licensee” or to exempt persons provided the person “does not engage in money transmission outside the scope of the exemption.” The act outlines provisions related to consistent state licensure, application for licensure, information requirements for certain individuals, reporting and recordkeeping requirements (including those related to anti-money laundering), and bond requirements. Provisions relating to examinations, investigations, and licensee supervision, as well as unauthorized activities are also discussed. The act also provides a comprehensive list of exemptions. [A copy of the bill text can be found here.](#)

North Dakota House Bill 1080 & Senate Bill 2111 – Electronic Vehicle Titles & Registration

On March 16, the governor signed into law two bills that will allow vehicle owners to store their motor vehicle registration electronically. House Bill 1080 will allow the North Dakota Department of Transportation to provide a “digital wallet” for motorists and allow for an electronic driver’s license and for electronic proof of insurance, rather than the paper registration cards currently required to be carried in or on the vehicle. The governor also signed a similar bill the day before, Senate Bill 2111, which will allow for electronic vehicle titling. [A copy of HB 1080 can be found here,](#) and a [copy of SB 2111 can be found here.](#)

North Dakota Senate Bill 2206 - Insurance Cash Value Exemptions

On March 28, the House held a hearing on SB 2206, which passed through the Senate on February 2, regarding insurance cash value exemptions under NDCC section 28-22-03.1. The proposed amendment to this section would allow judgment debtors in the state an unlimited exemption to the cash value, proceeds, and all other benefits of an insurance policy or annuity. The policies exempted under this section include, but are not limited to, those issued by life, health, and accident insurance companies, as well as policies provided by employers under a benefit plan. [A copy of the bill text can be found here.](#)

CFPB Update

The Consumer Financial Protection Bureau recently issued their final rule on small business lending in accordance with Section 1071 of the Dodd-Frank Act. The purpose of the rule is to facilitate fair lending and improve lending opportunities for women-owned and minority-owned small businesses by requiring covered financial institutions, which includes depository institutions and online and platform lenders, to collect and report several data points for applications from small businesses with \$5 million or less in gross annual revenue for the preceding fiscal year. Compliance will be required beginning on the following dates:

1. **Oct. 1, 2024** – Lenders originating at least 2,500 small business loans annually
2. **April 1, 2025** – Lenders originating at least 500 loans annually
3. **Jan. 1, 2026** – Lenders originating at least 100 loans annually

[For a copy of the rule, please click here.](#)

North Dakota Legislative Update

Keep up with all of the 2023 Legislative Session with NDBA's [Legislative Updates](#).

Upcoming NDBA Events - 2023

NDBA has many exciting and informational events planned for 2023. Below are some special dates to mark on your calendars!

SCHOOLS

Principles of Secured Lending Seminar | May 2, Radisson Hotel, Bismarck | May 3, Holiday Inn, Fargo |
May 16, Hilton Garden Inn, Grand Forks

Hosted by North Dakota Bankers Association

[Click for more information](#)

Compliance School | May 22-25, 2023 | Radisson Hotel, Bismarck ND

[Click for more information](#)

National School for Beginning Ag Bankers | June 26-29, 2023 | Black Hills State University, Spearfish, SD
Hosted by South Dakota Bankers Association

[Click for more information](#)

Women's Leadership Mastermind | Tuesday April 25-June 6, 2023 | 6-week Online Program

Hosted by Amy K of "She Gets It"

[Click for more information](#)

CONFERENCES

- **2023 Tri-State Trust Conference** | April 25-27, 2023 | Delta Hotel by Marriott, Fargo ND
- **2023 SDBA/NDBA Annual Convention** | June 4-6, 2023 | Sioux Falls SD
- **2023 Group Meetings** | September 11-14, 2023
- **2023 Ag Credit Conference** | September 28-29, 2023 | Bismarck ND