
ASK KENNEDY

March 1, 2023

Topics Covered:

- Member Questions
- Special Guest Jolene German: [NDBA Administrative Coordinator](#)
- Special Guest Ryan Ames: [Associate at Zimney Foster](#)
- ABA Farm Bill Statement (FIX)
- Federal Trade Commission Anti-Fraud Resources
- Crypto Update: Mitigation of Risk for Banks
- REMINDER: ACH Changes Upcoming
- NDBA Legislative Update: February 24, 2023
- [Upcoming NDBA Events](#)
- BankTalk Podcast

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Question #1: Currently, when we issue CDs/Time Deposit Accounts, we do so in a process where the bank keeps a copy of the CD (which is clearly stated on the top of the printed CD) and the client takes the original with them. When redeeming the CD, the client is required to provide the original for redemption, if the client misplaced the original CD, we require an indemnity bond.

From my understanding, bank CDs are not the same as what they had been many years ago, regarding being a negotiable instrument, but some banks still treat as such.

We would like to change our process to a paperless CD environment but want to ensure we consider legalities as well. I have a pair of questions regarding this process:

1) Are we able to redeem CDs without requiring an original document or indemnity bond?

A. It depends if the Certificate of Deposit is negotiable or nonnegotiable. If the Certificate of Deposit is nonnegotiable redeeming it without the original document or indemnity bond is far less risky. However, best practice would be to have procedures in place which verify the identity of the person redeeming and policies that require the redeemer to sign a waiver and indemnity agreement so that the financial institution is protected.

On the other hand, a negotiable Certificate of Deposit would require the original or an indemnity bond because it would be impossible to know who the current holder of the Certificate of Deposit is. In either case, the regulations dictating these types of transactions or vast and each particularity will vary the policies and procedures required. So, be sure to contact your legal counsel before making the change to paperless Certificates of Deposit.

2) Are there any ND laws that would prohibit us from issuing paperless CDs?

A. No, there are no North Dakota laws that prohibit banks from issuing paperless Certificates of Deposit. However, the type of paperless Certificate of Deposit issued by financial institutions will dictate the procedures and safeguards needed to shelter the financial institution from liability.

**Special Guest Jolene German:
SVP of Strategic Partnerships at North Dakota Bankers Association**

We would like to welcome Jolene German here today! Jolene has been the Administrative Coordinator for NDBA for the past 8 years, and she is here with us today to share some insight and perspective into the value of NDBA membership for both older and newer members, as well as a little about what she does behind the scenes for NDBA.

One of the main points Jolene will discuss today is the benefits of recruiting new members to join NDBA. There are numerous benefits and opportunities that younger bankers are missing out on by not signing on as members, including many career development and learning opportunities. For any questions or if you want more information on some of the benefits of being a member, please click on the link below:

<https://www.ndba.com/professional-development/>

Special Guest Ryan Ames: Uniform Commercial Code Amendments and New Article 12

Beginning in 2019, a Joint Committee appointed by the ULC and the American Law Institute (ALI) began drafting amendments to the UCC to address emerging technologies, such as virtual (non-fiat) currencies and distributed ledger technologies (*e.g.*, blockchain). As of July 2022, the Uniform Commercial Code Amendments have been approved and recommended for enactment in all the states. The draft amendments also contain a completely new article of the UCC – Article 12 – which applies to “controllable electronic records.”

Currently, the draft amendments and new article are before the North Dakota legislature as House bill 1082 and is being voted on. The house of representatives approved the Bill on February 15, 2023, and sent it to the Senate for their approval. If the Bill passes the Senate North Dakota Bankers must prepare for how these proposed amendments and enactments will change the banking industry. That is why we are hosting a Secured Lending Seminar for bankers who want to learn more about the upcoming changes to the UCC and the new Article 12. This program will also teach participants how to properly secure loans with personal property collateral, no matter if the borrower’s assets are physical or intangible, traditional or emerging digital assets. If you have any interest in the seminar, please see the attached registration forms below:

[NDBA Secured Lending Seminar Registration PDF](#) - [NDBA Secured Lending Seminar online registration form](#)

ABA Statement to the Senate: Farm Bill

On February 9, the Agriculture Committee held a hearing regarding the *2023 Farm Bill: Commodity Programs, Crop Insurance and Credit*. At this hearing, the ABA submitted a Statement for the Record laying out some of the initial comments and concerns that the banking community has raised for consideration. Below are some of the main points and requests made in the Statement:

- Farm Banking Outlook & Support
 - Farm banks make up the largest share of bank loans to farmers, holding nearly \$100 billion of the total \$179 billion in agricultural loans by banks.
 - Total agricultural lending by farm banks increased 5.5% in 2021, up from \$94.4 billion in 2020.
 - Agricultural production loans increased 2.9% to \$41.2 billion.
 - Farm banks experienced strong overall loan growth in 2021, with total loans at farm banks increased 4.2% over the year to \$284.9 billion, compared to overall industry loan growth of 3.1% for the year.
- Support for the Access to Credit for our Rural Economy Act
 - This legislation will help to lower lending costs for farmers, ranchers, and rural communities by removing the taxation on income earned from interest on agricultural real estate and residences in a population area of less than 2,500 which, in turn, will lower interest rates and lower costs for rural borrowers.
- Support for an increase in loan limits for FSA Guaranteed Loan Programs
 - It is being recommended that the FSA loan limits for guaranteed farm ownership be increased from \$1.75 million to at least \$3 million to account for rising land prices so as to allow bankers to better serve their customers over the life of the 2023 Farm Bill.

NDBA is encouraging bankers and financial leaders to reach out with any questions, comments, suggestions, and concerns regarding the 2023 Farm Bill and its effect on North Dakota farm and rural banking.

For a link to the full statement, please click below.

[ABA Farm Bill Statement](#)

Federal Trade Commission Anti-Fraud Resources

The FTC recently came out with a report stating consumers lost nearly \$8.8 billion to scams in 2022, representing a 30% increase from the previous year. Investment scams accounted for more than 40% of losses last year, at \$3.8 billion, with the second highest reported loss amount coming from imposter scams (\$2.6 billion). According to the report, the FTC received fraud reports from 2.4 million consumers last year; imposter scams led the way, followed by online shopping scams, prize scams, and job opportunity scams. Further, over

\$1.2 billion was lost to social media scams, with the highest average per-person loss of \$1,400. Below are some of the more common scams the FTC advises individuals and financial institutions to monitor:

- Unwanted Calls
- Impersonator Scams
- Health Insurance Scams
- "You've Won" Scams
- Home Repair Scams
- Investment Scams
- Job and Money-Making Scams
- Charity Fraud

For further information and detail on these scams, readers should consult the FTC guidance at the link below:

<https://consumer.ftc.gov/features/pass-it-on/resources>

Crypto Update: Mitigation of Risk for Banks

Banking regulators recently issued a joint statement reminding financial institutions of their risk management obligations should they offer depository services for cryptocurrencies. In the statement, the Federal Reserve, FDIC, and OCC said that banks are not prohibited from providing banking services permitted by law or regulation. However, the agency also noted that certain sources of funding from cryptocurrency-related entities may pose greater liquidity risks to banking organizations due to their unpredictability.

The risks highlighted by the agencies included the volatility of deposits by cryptocurrency-related entities for the benefit of that entity's customers. Such deposits can be susceptible to large and rapid changes in deposit and withdrawal volume when customers react to cryptocurrency-sector-related market events, media reports and uncertainty. Additionally, deposits that constitute stablecoin-related reserves are another risk as they are susceptible to drastic changes stemming from unanticipated stablecoin changes in cryptocurrency markets.

In response to these concerns, the statement also listed some practices to manage the liquidity risks, including understanding the drivers of the potential behavior of deposits from cryptocurrency-related entities, assessing potential interconnectedness across deposits from cryptocurrency-related entities and the associated liquidity risks, and performing robust due diligence and ongoing monitoring of cryptocurrency-related entities that establish deposit accounts.

For more information and to read the full statement, please click on the link below.

[Crypto Mitigation Statement](#)

REMINDER: ACH Changes Upcoming

Beginning on March 17, there will be new systems in place for banks regarding ACH transactions. These changes will, among others, affect fraud security, third-party roles, licensing, and data security. Please click on the link below to ensure you are up-to-date and in compliance with the new systems.

[ACH CHANGES 2023](#)

NDBA Legislative Update: February 24, 2023

The State Legislature recently adjourned until March, but not without substantial discussion on numerous issues. Some of the major topics of discussion included income tax relief, property tax relief, workforce development, the opening of laws allowing for investment in agriculture, a long-term plan for how to invest the earnings from the \$8B Legacy Fund, and the emerging CO2 industries relating to energy and agriculture.

Please visit the link below to see the most recent detailed update.

[Update: February 24, 2023](#)

Upcoming NDBA Events - 2023

The North Dakota Banker's Association has many exciting and informational events planned for 2023. Below are some special dates to mark on your calendars –

Women Bankers Leadership Series

This spring, NDBA will be working with speaker Amy K to present a virtual Leadership Series specifically for Women Bankers called, *“She Gets It Mastermind - Learn the Language of Self-leadership”* a 6-week triple-shot of Amy K mojo to *regroup, recenter, and reset*. We believe you deserve a fulfilling, joy-fueled life. Join us to get the tools you need to focus on your priorities, fuel your energy, and align your actions with your ideal life and career.

Dates: April 25-June 6

Two levels available. Elements include:

- Six weeks of weekly 90-minute live interactive sessions (sessions will also be recorded)
- Six corresponding playbooks with tools and exercises
- Private networking community

Learn more and express your interest at:

<https://my.shegetsit.com/mmwomenbankers>

SCHOOLS

Principals of Secured Lending: UCC Article 9 and New Article 12

May 2, 2023 | Radisson Hotel, Bismarck ND

May 3, 2023 | Holiday Inn, Fargo ND

[NDBA Secured Lending Seminar Registration PDF](#) - [NDBA Secured Lending Seminar online registration form](#)

Compliance School

May 22-25, 2023

Dakota School of Banking

June 11-16, 2023 | University of Jamestown, Jamestown 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](#)

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**
Fall 2023 | Bismarck ND

BankTalk Podcast

Remedy Consulting, a new NDBA associate member, recently brought their “BankTalk Podcast” to our attention. This podcast features thought leadership interviews with community financial institution executives on relevant banking topics and is a wealth of knowledge for anyone in the banking industry. If any of you or your colleagues are interested you can find the podcast at the following link: [The BankTalk Podcast](#).