



State of North Dakota
**DEPARTMENT
of FINANCIAL
INSTITUTIONS**

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Volume 1

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FROM THE COMMISSIONER



As you will note, this Newsletter has been especially designed for the consumer industries that the Department regulates in the State of North Dakota. We believe this will be more beneficial than receiving a Newsletter with a lot of information that does not concern the consumer industry. We hope this

will assist all the industries we regulate to help them comply with laws, rules, and regulations, and open up a better line of communication between the industries and the Department. If at any time you would like the Department to comment on areas that may affect your industry, please feel free to contact us and we will try to include those questions or items of interest in our next Newsletter.

The Department has been very busy in recent months finalizing the automation project which will electronically automate all Department records concerning the consumer industry. This project began in

July 2001 with the initial time being spent on writing the program. The program has been finalized and now the Department is inputting all data concerning your individual licenses into the system. As you will note, the Department was able to process renewal applications on-line. You should be aware that this initial process may have taken somewhat longer to do as the Department required all information to be included on this renewal application. In the future, you will be given an opportunity to update this information and this process will be considerably less time consuming.

The Department has hired an intern, Chris Ludwig, a student at the University of North Dakota, to assist us in the consumer division. Chris has helped input various files into the computer system, and is also assisting in renewing applications and reviewing financial statements. Chris has also handled a number of consumer complaints, and we feel this process has been beneficial to both Chris and the Department.

MORTGAGE RATES DROP, DEPARTMENT EXPERIENCES GROWTH IN NUMBER OF LICENSED MONEY BROKERS

With the economy in its current state and mortgage rates at all time lows, the Department continues to experience growth in the number of licensed money brokers. In 1995, the Department licensed 54 money brokers. By 1999 that number grew to 197 and as of June 4, 2002 the Department had approximately 276 licensees. The Department feels the declining mortgage rates have been a major contributor to this growth.

The Department of Financial Institutions receives several calls from people inquiring as to what types of business can be conducted under a money broker license. A company that holds a money broker

license may originate first and second mortgages, home equity loans, large consumer and commercial loans, or simply broker loans for persons or businesses desirous of obtaining funds for any purposes. Businesses most commonly obtain this license to originate first and second mortgages.

The Department continues to receive new applications for money broker licenses on a weekly basis. The number of licensed money brokers is expected to continue to grow as long as interest rates maintain their current levels and the housing market remains strong.

EXAMINATIONS UNDER WAY FOR DEFERRED PRESENTMENT SERVICE PROVIDERS

The Department of Financial Institutions has conducted approximately ten examinations of deferred presentment service providers throughout North Dakota. The examinations are conducted with no advance notice given to the business. The Department conducts the examinations in this manner to enable us to examine for the possibility of adverse actions or business practices occurring in a deferred presentment service provider business.

The examinations are scheduled to take place at each deferred presentment service provider once every eighteen months. However, if an examination results in several violations of law or an order being issued, the Department may re-examine a business more frequently to ensure management has taken the proper actions to correct previous violations of law.

Examinations conducted thus far have uncovered several violations of North Dakota Administrative Code 13-06-01-10 entitled Required Records. Deferred presentment service providers have not been maintaining records in the proper format as set forth in the above-cited section of the Administrative Code. The Department feels many of these violations could have been prevented had the operators of these businesses reviewed the North Dakota Century Code and North Dakota Administrative Code more thoroughly.

On average, the examinations are taking fifteen to twenty hours to complete. Five to six of those hours are spent on site depending on the amount of loans outstanding and the bookkeeping system of the business. The rest of the time is spent reviewing work done on site and writing the report of examination. Maintaining records in their proper format will substantially reduce the amount of time it takes to complete an examination.

For those deferred presentment service providers located outside the Bismarck-Mandan area, travel expenses will also be added to the cost of the examination. However, when examinations are conducted in Fargo, for example, the Department will plan to complete three or four examinations in one trip. The travel expenses such as meals, hotel costs, and mileage will then be split between each of the businesses being examined.

DEFERRED PRESENTMENT SERVICE PROVIDER REQUIRED RECORDS

Two of the main records a deferred presentment service provider is required to maintain are also the two records that are most commonly not kept in the proper format. North Dakota Administrative Code 13-06-01-10 entitled Required Records, sets forth guidelines for maintaining a Transaction Register and a Cash Book. Subsection one of the above cited section of the Administrative Code outlines the requirements of the Transaction Register and states; (A) The transaction register must contain the original entry and be a permanent record, and must show for every transaction the account number, date of transaction, maturity date, date of rollover, and new maturity date if any, amount of transaction, name of check maker and all other accountholders on that account, and the amount of fees expressed in dollar amount. (B) The transaction register must be kept numerically by transaction number in the order made and must have headings for each of the items required. Subsection five of the above cited section outlines the requirements for a Cash Book and states; all receipts and disbursements, of any amount whatsoever, must be entered in the cash book or equivalent record on the day they occur. Separate headings must be provided for payments and fees collected from check makers. The cash book must be a record of all details of income and disbursements, including all entries to individual accounts of check makers.

The Department has recommended the following formats for the Transaction Register and Cash Book:

Transaction Register:

Transaction Number	Account Number	Date of Transaction	Name of Check Maker
Amount of Transaction	Amount of Fee	Maturity Date	Date of Renewal

New Maturity Date

Cash Book:

Beginning Cash:	\$5,000
Less:		
Disbursements Made	400
Plus:		
Payments Received	240
Fees Received	80

Ending Cash:\$4,920



Several deferred presentment service providers have asked our Department for standardized forms for the required records. The Department does not produce standardized forms for a couple of reasons. First of all, there are sixty-four deferred presentment service providers licensed in the State of North Dakota. Most of these businesses have their own software or system of bookkeeping. It would not be fair of our Department to force businesses to use standardized forms when there are many options for record keeping. Secondly, the responsibility of this Department is to enforce the law deferred presentment service providers are to operate by. It is not the responsibility of the Department to tell the business owners how to operate their businesses.

The Department recommends deferred presentment service providers closely review North Dakota Century Code 13-08 and North Dakota Administrative Code 13-06-01 to ensure they are operating within the guidelines of the law. Section 13-06-01-10 entitled Required Records should be focused on, as this is the section outlining the records all deferred presentment service providers are required to maintain. If there is any confusion as to what the Department requires for records, deferred presentment service providers should not hesitate to contact us.



ND RULES AND REGULATIONS...

... located on our web site

🔗 DiscoverND.com/dfi

🔗 [Rules and Regulations](#)

TRANSFERABILITY OF CONSUMER LICENSES

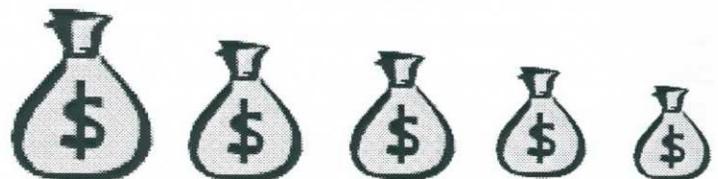
In today's world of mergers and acquisitions, the issue of changes in ownership and how a company deals with these changes is becoming a larger issue than it once was. The Department receives phone calls weekly from current licensees whether they are a collection agency, money broker, consumer finance company, or deferred presentment service provider regarding a change in ownership their company is under going.

Each type of company has the ownership change issue addressed in their respective section of the North Dakota Century Code. For the most part the issue is addressed in the following manner for each type of license: A license is not transferable. If the Commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a license, the Commissioner may require a new application from the purchaser.

In determining whether or not a change in ownership has occurred, the Department will look to see what percentage of the applicant's stock is being transferred. As a general rule of thumb, if twenty-five percent or more of the stock is being transferred, a new license will be required. The license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied. The application for new licensure must be filed within forty-five days from the date the change of ownership is consummated.

Furthermore, a license is not transferable between different types of entities. For example, a pawnbroker cannot transfer their license to a deferred presentment service provider. The licenses must be obtained separately.

If your company is planning to or has undergone a change in ownership, no matter how small the change, the Department must be contacted to determine what steps need to be taken to comply with North Dakota laws and rules and regulations.



PREMIUM ASSET RECOVERY CORPORATION

Premium Asset Recovery Corporation (PARC), a collection agency located in Boca Raton, Florida, has become a well-known name to North Dakota residents over the past several months. On Tuesday, May 7, 2002 the Department of Financial Institutions began to receive several phone calls from North Dakota residents regarding collection letters that were sent out by PARC regarding bills incurred at Dakota Hospital, many of which were from the mid 1990's. The Department has been told between 4,000 and 6,000 collection letters were mailed out to North Dakota residents and another 4,000 to 5,000 to Minnesota residents from this unlicensed company.

The news about PARC was first brought to the public's attention on a local radio talk show in Fargo, North Dakota. Several people had called into the show and were wondering if they were a legitimate company or a scam. PARC is a legitimate company that obtained outdated information off of a website regarding licensing requirements for collection agencies in the State of North Dakota. Based on what this website stated, PARC felt they would be exempt from licensing requirements.

The Department of Financial Institutions immediately contacted PARC when we were informed about the activities of the agency in the State of North Dakota. We told PARC they must immediately cease all business activities in the State of North Dakota and issued them a cease and desist order stopping all business activities. Along with this order, we sent PARC a collection agency application and all required forms to become licensed with our Department.

Throughout the course of the next several weeks, the Department continued to receive phone calls from North Dakota residents regarding these collection letters. All residents who received a bill were told to send PARC a letter stating they dispute the debt and to request an itemized statement of the debts PARC states they owe. A collection agency must furnish this statement pursuant to North Dakota Administrative Code 13-04-02-14 entitled Statement furnished upon request which states in part; A collection agency, upon a written or oral request by the debtor, shall provide a written statement to the debtor indicating the current balance of the remaining debt, the total of all interest charged, and a record of all payments applied to that debt. The statement must include all activity since the debt was turned over to the collection agency or since the date of any previously furnished statement. A col-

lection agency is not required to furnish a requested written statement more frequently than once every six months.

Another factor to consider with the collection letters sent out is many of the debts that were attempted to be collected were from the mid 1990's. The statute of limitations for medical debts in North Dakota states any debts more than six years old cannot be collected. This is the case with many of the debts residents received letters for.

The Department did issue a collection agency license to PARC. However, before the license was issued, the Department entered into an agreement requiring PARC to follow certain requirements before they collected these debts in North Dakota. The Department also collected a \$5,000 penalty from PARC.



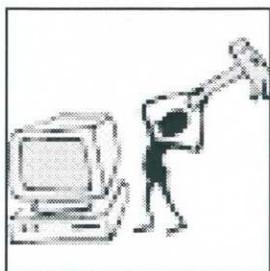
DEFERRED PRESENTMENT SERVICE PROVIDERS IN VIOLATION OF THE THREE DAY "COOLING-OFF" PERIOD

North Dakota Century Code 13-08-12(4) entitled Fees for service – Deferred presentment service transaction procedures states in part; A licensee may not enter into a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction. The Department of Financial Institutions has discovered through examinations, this law has been violated by various deferred presentment service providers in a few different forms. The most common violation of this law occurs when a customer is allowed to enter into a transaction before three full business days have been satisfied. For example, if a customer pays off their transaction on a Monday, a new transaction could not be entered into until Friday of that same week. However, this law has also been violated in another form. Various deferred presentment service providers have been accepting two checks from customers for one transaction. This practice is occurring with larger transactions. Deferred presentment service providers have stated there is a better chance of collecting two \$240 checks rather one \$480 check if a customer does not repay the loan at the time it is due.

Under North Dakota Century Code 13-08 the definition of a deferred presentment service transaction is a transaction made under a written agreement between a licensee and the maker of a check under which the licensee: a. pays to the maker of the check the amount of the check, less the fees permitted under the chapter, and accepts (A) check from the maker dated on the date of the transaction and agrees to hold the check for a period of time before the negotiation or presentment; or (B) accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check. Under this definition, a single check is referred to when describing what constitutes a deferred presentment service transaction. Therefore, taking two checks simultaneously constitutes entering into two transactions. Under no circumstances can two checks be accepted for one transaction.

The Department of Financial Institutions will allow deferred presentment service providers to satisfy the three day "cooling off" period by tracking seventy-two hours between transactions. If this method is going to be used rather than waiting three full business days, the date and time a transaction is entered into and completed must be recorded for every transaction. These times must be easily identifiable and need to be recorded on the transaction register with the original entry of the transaction. Deferred presentment service providers need to keep in mind the seventy-two hours must be business hours just as the three days need to be business days.

Record Automation Project



In June 2001 the staff of the Department of Financial Institutions began working with the state's Information Technology Department to develop a database for the records of the three separate bank, credit union, and consumer divisions within the Department. The goal is to automate as much of the paper information received from the respective regulated entities as possible. Included in the scope of the project was to make available on-line applications to the extent practical as part of the state's eGovernment initiative. Most of the benefit for the electronic applications fell into the realm of the consumer division; however, an on-going goal is to automate applications in all divisions as information technology continues to evolve.

The process involved identifying the system

requirements for each of the divisions, development of the database, and testing of the database. The consumer division was chosen as the first area to be automated because of the extremely paper intensive process involved. If you have visited our website recently you will see the licensees for our consumer division are able to apply or renew their license online. We have completed the first two segments for the bank and credit union divisions and are in the process of testing the database now. Unfortunately, we have not automated as much of the application processes for these divisions since many of the applications require supplemental data (e.g. income projections, call report data) which is difficult to automate. We are hopeful as the advances are made in the electronic signature area we will be able to automate more of the forms and applications for all regulated entities.

NEW EMPLOYEES

The Department of Financial Institutions has two new employees. Jeff Jungman has been named our Chief Examiner – Banks. Jungman comes to us from Estes Park, CO. where he worked at Weststar Bank as Regional President. Prior to Weststar Bank, Jungman was the Assistant to the Superintendent at the Iowa Division of Banking. He is a graduate of Iowa State University, Ames, Iowa. Jeff and his wife Carol have two sons. Joan Becker, our new Director of Administration, is not new to State Government. Becker started with the State of North Dakota Tax Department 23 years ago as a Sales Tax Field Auditor. While at the Tax Department she also worked as an Accounting Budget Specialist. The past 6 years Becker was employed at the North Dakota State Treasurer Office as the Financial Manager. Joan and her husband Ken have one son.

The Department of Financial Institutions welcomes our new employees and is excited to have them as part of our team.



DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF

Timothy J. Karsky	Commissioner	328-9935
Robert J. Entringer	Assistant Commissioner	328-9936
Jeff Jungman	Chief Examiner - Banks	328-9938
James M. Laidlaw	Chief Examiner - Credit Unions	328-9937
Joan Becker	Director of Administration	328-9958
Greg Meidinger	Consumer Licensing Investigator/Examiner	328-
Wayne Hatzenbuehler	Credit Union Examiner	328-
Suzette Richardson	Administrative Assistant (Bank/Credit Union)	328-9933
Lisa Fischer	Administrative Assistant (Licensing/Consumer)	328-9934
Scott Miller	Assistant Attorney General	328-2100

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 Doug Grenz, Supervising Examiner
 Monte Wolf, FI Examiner II
 Dawn Ystaas, FI Examiner I
 Mitzi Bjorland, FI Examiner I

Minot Examination Crew
 Doug Grenz, Supervising Examiner
 Craig Marsh, FI Examiner III
 Mike Martin, FI Examiner I
 Troy Potter, FI Examiner I

Fargo Examination Crew
 Dave Lessard, Supervising Examiner
 Joe Banister, FI Examiner III
 Mike Aschauer, FI Examiner I
 Vacant, FI Examiner

Grand Forks Examination Crew
 Doug Hoselton, Supervising Examiner
 Vacant, FI Examiner I
 Tom Metelmann, FI Examiner I

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Launa Moldenhauer	Kirkwood Bank & Trust Co.	Bismarck	258-6550
Roger Monson	The Citizens State Bank of Finley	Finley	524-1921
Gary Petersen	Lakeside State Bank	New Town	627-4717
Terry Zeltinger	United Community Bank of ND	Minot	839-3500

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Charles Gates	Director - Area Community CU	Grand Forks	772-5029
Judy Millar	Public Member	West Fargo	282-4692
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Steven Tonneson	Prairie Federal CU	Minot	837-5353

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