

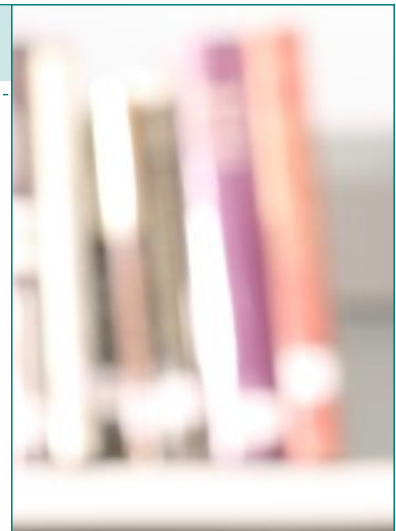
A MESSAGE FROM COMMISSIONER KRUSE

As the legislative session is coming to an end, we want to make sure you are aware of changes in our law that may affect you. The Department’s bill with bank and credit union legislative changes contained 16 amendments. This newsletter addresses the ones that are most important for you and what you should know. Please note that these changes went into effect when the Governor signed the bill.

Our overall goal this legislative session was to remove unnecessary red tape and modernize portions of our statute. We appreciate the input we have received from the credit unions we regulate, and we value the working relationship we have with the credit union association. When we are able to work together to address problems and find solutions, everyone benefits.

The Department will have a virtual “Day with the Commissioner” event on May 18. It will not be a whole day, since I’ve found that virtual events are more effective when they are not so long. We will cover our legislative session, the state of the credit union industry and as part of the registration, we will solicit questions from you to ensure we address topics you are interested in.

I also want to take this opportunity to extend my thank you for your patience and understanding this last year as we have tackled the most unique year we have ever experienced. We appreciate how you have accommodated virtual examinations, and we recognize the tremendous service you are providing to your communities in the midst of being short on staff and limited lobby access. I am pleased to report that our Department has not received a single formal complaint from a citizen regarding credit union access. This pandemic has again showed how essential you are to our North Dakota communities, and how central you are to any economic recovery efforts.



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LEGISLATIVE CHANGES AFFECTING YOU

Assessments will now be paid semi-annually **(NDCC 6-01-17)**

The State Credit Union Board sets the assessments that are to be paid by our institutions. As this last year has shown, it can be difficult to predict budgetary needs far in the future. To ensure better responsiveness and flexibility in our budgeting process, the Department will now bill for assessments twice a year, rather than just once. Assessments will be due within 30 days of 6/30 and 12/31. This may also assist you as you monitor your income statement in relation to your budget by spreading out the impact of assessments over time.

Our Mission: To maintain public confidence in North Dakota financial institutions by ensuring the financial industry operates in a safe and sound manner while complying with applicable rules and laws.



Powers of credit unions (NDCC 6-06-06)

Investments (NDCC 06-06-06.5(h))

It is now clarified that loans associated with employee benefit plans are permissible. The addition in statute is the underlined:

In investments, or insurance products or in loans to the credit union employee associated with the investment or insurance product which are otherwise prohibited by this section if the investments are directly related to a benefit plan for credit union employees.

Other Real Estate Owned (NDCC 6-06-06.10(b)):

We also amended the statute to ensure that the credit union is consistent with Generally Accepted Accounting Principles (GAAP) in the treatment of other real estate owned. GAAP requires that the value of real estate is established when transferred, and such value is established by an appraisal (which may be done internally).

Upon transfer to other real estate owned, a current appraisal must be conducted by a state-licensed individual who is independent of the transaction for all real estate recorded at or above one hundred thousand dollars or through a market evaluation performed by a qualified individual who is independent of the transaction for all real estate recorded below one hundred thousand dollars. Except as otherwise provided by chapter 10-06.1, a state credit union may hold possession of any real estate acquired after July 1, 1991, under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06.1, real estate acquired before July 1, 1991, may be held for a period not exceeding five years from July 1, 1991. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good-faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

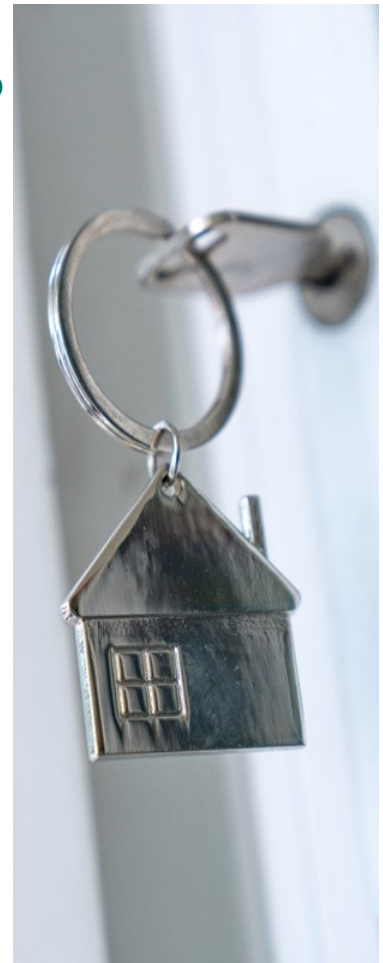
LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Powers of credit unions (NDCC 6-06-06)-Continued

Limited Liability Corporation can be established to hold real estate (NDCC 6-06-06.10(c):

To shield an institution from undue liabilities in the event you end up owning real estate as a result of foreclosure, credit unions may now establish an LLC to hold the real estate – upon approval by the Commissioner. This new section reads as follows:

Notwithstanding other sections of this chapter, a credit union may apply to the commissioner for authority to exchange its interest in real property acquired in satisfaction of a debt previously contracted for an interest in an entity that would dispose of the real property. If the commissioner's decision with respect to an application is unfavorable, the applicant credit union may appeal the decision to the state credit union board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant credit union of the decision.



“Good legislation should bring clarity and not confusion.” -Bill Haslam

Credit union board membership (NDCC 6-06-11)

To eliminate duplication of your reporting, if changes to the board or committee membership has been updated on the NCUA call report profile within the 10-day reporting requirement, no notice is necessary to the Department.

Supervision and examination of financial institutions (NDCC 6-01-09)

Several inconsistencies between this section and section within 6-06 were amended to make clear the role of the state credit union board and reporting of CUSO review authority.

LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Loan administration (NDCC 6-06-14.1)

We replaced NDCC 6-06-14 with a new section to improve the structure and wording of the current requirements to make it easier to read and understand. Although many of the basic concepts remain unchanged, the language differs slightly to fit the new format or current underwriting standards. This rule again clarifies that loans associated with employee benefit plans are permissible as we outlined in NDCC 6-06-06.

6-06-14.1. Loans - How made - Security - Meetings and duties of loan administration - Preferential loans.

1. *The duty of loan administration falls to the credit committee if the bylaws establish a credit committee, or to the credit manager appointed by the board of directors if the bylaws do not provide for a credit committee. At a minimum, loan administration must include:*
 - a. *Oversight over all loans.*
 - b. *Performance of loan-related duties as often as necessary, and in the case of a credit committee, a meeting at least once each month. Each member of the credit committee must receive prior notice of the time and location of a meeting.*
 - c. *Loan applications, notes, security instruments, and all other loan documentation necessary to execute the transaction on forms approved by the committee or credit manager which set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee or credit manager may require.*
 - d. *Documentation that the loan complies with board of directors-approved loan policies, including policy limits on the maximum unsecured loans to one borrower and the limit on maximum total loans to a borrower.*
 - e. *Documented approval or denial of the loan by the majority of the entire credit committee or by the credit manager, except that the credit committee or credit manager may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the board of directors.*
 - f. *Sufficient segregation of duties to limit risk or error if possible. At a minimum, an individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer.*
2. *Not more than one member of the credit committee may be appointed as a loan officer, unless credit union bylaws provide for a board of directors-appointed credit manager and the credit committee is made up of credit union employees appointed by the credit manager.*
3. *Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and committee members must:*
 - a. *Be current as outlined on the terms of the loan agreement.*
 - b. *Be made on substantially the same terms, including interest rates, fee structure, and collateral, as those prevailing at the time for comparable transactions with other persons.*
 - c. *Be written in strict conformity with the credit union's policies, rules, and regulations.*
4. *An exception may be made for a loan otherwise prohibited by this section if the loan is directly related to a retirement investment benefit plan for credit union employees.*



LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

DEPARTMENT OF FINANCIAL INSTITUTIONS

The Department of Financial Institutions traces its lineage to the North Dakota legislature's creation of a State Examiner in 1893. A detailed chronology of the Department and its predecessors can be found in the archives of the State Historical Society: <http://history.nd.gov/archives/stateagencies/Bankingandfinancial.html>

Through the Bank and Credit Union divisions, the Department has charge of the execution of all laws relating to state-chartered banks, trust companies, and credit unions. The Commissioner, in conjunction with the State Banking Board (seven members) and State Credit Union Board (five members), provides supervisory authority over North Dakota state-chartered banks and credit unions. All members of these Boards are appointed by the Governor. The Commissioner is appointed by the Governor and confirmed by the North Dakota Senate and serves as the Chair of each Board. The Department's Consumer Division regulates money brokers, mortgage loan originators, deferred presentment service providers (payday lenders), collection agencies, debt settlement service providers, and money transmitters.

Our mission is to maintain public confidence in North Dakota financial institutions by ensuring the financial industry operates in a safe and sound manner while complying with applicable rules and laws. Our vision is a safe, secure and competitive financial services environment, which promotes the economic well-being of North Dakota businesses and consumers.

The Department is committed to maintaining a standard of excellence in meeting its regulatory responsibilities. In 1993, the Department was accredited by the Conference of State Bank Supervisors (CSBS). In 2000, the Department was accredited by the National Association of State Credit Union Supervisors (NASCUS). In 2015, the Department received a certificate of accreditation from the CSBS/AARMR (American Association of Residential Mortgage Regulators) Mortgage Accreditation Program. Accreditation is only accorded to state regulatory agencies that meet minimum standards established by these accrediting organizations. Once obtained, the Department is subject to a re-accreditation process every five years after the initial accreditation.

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 **NORTH Dakota** | Financial Institutions
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Civil money penalties (NDCC 6-01-04.3)

Although civil money penalties are seldom used, it is an important tool to have available to avoid the Department being forced to take more disruptive measures such as taking possession. The levels have not been adjusted since 1989 and the new levels are consistent with levels in other states. Cross references were also updated.

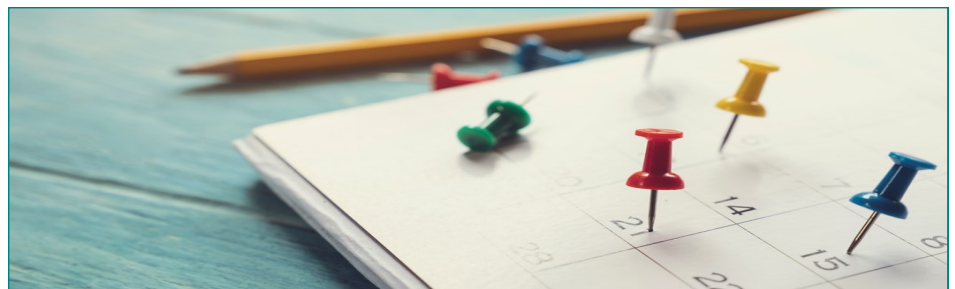
The entirety of the Department bill SB 2101 can be found here: [Enrolled Senate Bill No. 2101 - Sixty-seventh Legislative Assembly of North Dakota - LC Number 21.8094.03000 \(nd.gov\)](#)

Credit Union failures and emergency conservatorships (NDCC 6-07.2)

A considerable undertaking for the Department this legislative session was to address credit union closures. While we certainly hope we never need to use this, we need to be ready just in case. Therefore, we repealed the entire chapter 6-07, which was written in 1887, and replaced it with a new chapter, 6-07.2. The new chapter includes current processes, possible situations, and industry best practices. Please note that while this bill also addresses voluntary liquidations, this only applies to bank voluntary liquidations. Credit union voluntary liquidations continue to be governed by 6-06.1. This was a separate bill without an emergency provision, and therefore has an effective date of 8/1/2021.

The entirety of bill SB 2102 can be found here:

[Enrolled Senate Bill No. 2102 - Sixty-seventh Legislative Assembly of North Dakota - LC Number 21.8095.03000 \(nd.gov\)](#)



SAVE THE DATE
Virtual “Day with Commissioner”
May 18.