

# NEWS LETTER



The Official Publication of the NACM Credit and Financial Development Division

October 2017

## CFDD National Conference Highlights

The Old Market district in downtown Omaha, Nebraska, proved to be an excellent location for this year's CFDD National Conference. Your CFDD National Board worked diligently to organize an event that utilized the experience, talent, knowledge and leadership from members within our organization to present a dynamic and informative collection of educational topics for attendees to enjoy.

"A Steak in Your Future" was an appropriate theme as all attendees were "invested" in their personal and professional growth by attending and participating in all conference sessions and events. Heartfelt thanks are extended to the CFDD Omaha Chapter for their fabulous hospitality and Western-themed décor for the closing night banquet.

An emphasis was placed on our VIPs, who were attending a CFDD National Conference for the first time, ensuring a warm reception from a seasoned CFDD member who could serve as a mentor and guide for each first-time attendee throughout the conference.

Two major annual fundraising events were held during the conference. The Silent Auction and the Dessert Auction perpetuated an atmosphere of bidding, then outbidding, members who were valiantly trying to acquire their favorite auction item or dessert! Obviously, the entire CFDD membership wound up being the ultimate "winners" during these fundraising events since proceeds benefit the CFDD National Scholarship Fund.

Your CFDD National Board is committed and dedicated to working on a three-year plan of action to help facilitate making positive changes to benefit all CFDD members. We appreciate and relish the time we have to meet in person to discuss timely and relevant issues facing our entire organization. Having local CFDD Chapter Presidents, Vice Presidents and member representatives in attendance for a portion of our Board meeting always provides valuable and insightful information about successes and challenges you face on a local level. Remember Chairman Wodiuk's theme: "If it doesn't challenge you, it won't change you." (Fred DeVeto)

Sincere thanks are extended to the NACM National staff, CFDD National Board, CFDD Past National Chairs, CFDD Omaha Chapter members and our M4Ms (Mentors for Members) for your enormous commitment to organizing and executing an outstanding CFDD National Conference. Please add appropriate dollars in your budgets for 2018, apply for available scholarship dollars and commit to having a "Steak in Your Future" by planning to attend next year's CFDD National Conference!



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## Letter from...

### Brett Hanft, CBA CFDD National Vice Chairman Member Services and Publicity



I'm tremendously honored to be serving on the CFDD National Board as your Vice Chairman of Member Services and Publicity.

These areas of responsibility have critical importance to our CFDD organization. I'd like to share a few points regarding each topic that falls under my responsibility to our CFDD membership this year.

**Publicity.** I think you'll agree that the CFDD National newsletters have been outstanding! Every member of the CFDD National Board has been tasked with preparing and submitting an article for publication during the year. I want to challenge all of you as well to keep our newsletter in mind when you find articles of interest and relevance to the credit and finance profession. If it's important to you, it's important to other CFDD members.

Our National newsletter also provides local chapters with a forum to share their successes with the entire CFDD membership. Please submit your program picks, member spotlights, new certification designees, fundraising events/successes in your local chapters, and continuing education sessions you've organized and presented to your chapter membership. Whenever you run across information to share in an upcoming newsletter, please take a moment to email it to me at [hanft@lumber.com](mailto:hanft@lumber.com).

We are beginning to highlight the business uses of social media in this edition of our newsletter. Many people use social media for personal use—but how does it provide benefit to you in your job? Please share your ideas about the social media

applications you use to provide assistance in your daily business tasks. I will summarize responses you provide and follow up with results in our December newsletter. Thanks for taking a moment to share your ideas with me on this increasingly valuable resource in our business environment.

**Membership.** As your National Board works to develop our three-year plan, membership is one of the primary focal points of discussion. We must strive to engage and involve every existing member within our organization. Make sure you are actively mentoring members in your chapters who are looking to enhance their leadership skills, pursue certification and step out of their comfort zone to become more active members by serving on a committee or even the local chapter Board of Directors. Members who are engaged and active provide strength and stability in your CFDD chapters.

Additionally, we are always looking for ways to enhance and build existing membership by adding new chapter members. Utilize the tremendous benefit of networking and share the many benefits membership in CFDD can offer to credit and finance professionals. You might consider offering a local scholarship to help members cover the cost of membership dues.

Your National Board is currently working on some exciting changes to our Direct Member benefits in an effort to better engage this select membership classification in our organization. We want to provide value and benefit, even though these members do not have access to a local CFDD chapter. Be on the lookout for additional information coming up in subsequent newsletters as these changes are finalized and announced in the months to come. When you have conversations with other credit professionals who do not have access to a local CFDD chapter, I encourage you to promote our Direct Membership program.

Thank you for your commitment and dedication to CFDD. If you have any questions in the areas of membership and publicity, please feel free to contact me.



### Social Media Survey

What social media app(s) do you use?

How often?

How successful do you find using social media in your daily business tasks?

Do you find info when you have pending order(s) on a brand-new account?

Do you reach out to contact customers when invoices are due for payment?

Please share your thoughts/ideas on how social media benefits YOU in the workplace.

Email responses to Brett Hanft at [hanft@lumber.com](mailto:hanft@lumber.com).

## Member Viewpoint— Seeing the Vision

The “Vision of CFDD” is to be a leading provider of professional development opportunities through learning, coaching, networking and individual enrichment. Always worth repeating, it is a reminder to all of us how important it is to never rest on our laurels and always strive to learn and grow professionally.

At every credit conference I have attended, I have heard at least one person say: “No one ever grows up saying they want to be in the credit field—you just ‘fall’ into it, and you either love it or you don’t.” This statement is one reason why the Vision of CFDD draws members together. Because people often enter into some type of credit role with no previous experience, they find comfort in attending a CFDD meeting or conference and talking to other colleagues who are experiencing the exact same issues and situations they are facing on a daily basis.

Having a forum where such challenges and solutions can be discussed freely lends itself to creating an environment of learning and coaching that is mutually beneficial for all parties involved. Lasting friendships are formed, trust is built and people leave better off than when they came, and with a ton of resources for any questions that come up at a later date.

Those members with less experience are able to glean knowledge from those who have come before them, but this is not a single-direction process. Frequently, members who have

been around for years are also able to learn something new. We all know that the Millennials can teach us a lot!

At the recent CFDD National Conference in Omaha, first-time attendees, known as VIPs, were paired with more veteran members as a part of the M4M (Mentors for Members) program. The idea behind this program was that new attendees had a designated person to smooth their way; someone to introduce them to others, answer their questions and generally make them feel more comfortable. And guess what—the idea for this program came from a VIP from last year’s conference! The M4M program was very successful, and it exemplifies the Vision of CFDD perfectly. Soccer star Pele said, **“Success is no accident. It is hard work, perseverance, learning, studying, sacrifice and, most of all, love of what you are doing or learning to do.”**

Those of us who have decided to make a career in the credit field because we love what we are doing will continue to see the Vision of CFDD, and embrace the spirit of that Vision—constantly learning and growing, with the help of our fellow CFDD members along the way.

*Submitted by DeLinda Goodman, CCE, CFDD Louisville Chapter, Credit Manager, Motor Coach Industries International Inc.*

# Uniform Commercial Code Part 1

## BACKGROUND AND INTRODUCTION

The Uniform Commercial Code is a standard set of business laws that regulate financial contracts. It has been adopted by most states in the U.S. The premise of the Uniform Commercial Code is that the personal property commercial transaction is a single subject of the law, notwithstanding its many facets, involving the sale of and payment for goods. There may be a contract for sale, the giving of a check for part of the purchase price and the acceptance of some form of security for the balance. The basic objective of the Code is to bring all of these phases of the purchase and sale of goods under one statute and to make the law simple, clear, modern and uniform. The Code treats these various phases under nine operative articles.

## ARTICLE 1: GENERAL PROVISIONS (2001)

To be consistent with a major objective of flexibility in order to permit adaptability to change and expansion of commercial practice through custom, usage and agreement of the parties, Article 1 contains several general policy pronouncements as a guide to the construction of sections throughout the Code.

## ARTICLE 2: SALES (2002)

### Formation of the Sales Contract

The Code makes sales contract law conform to commercial practice and understanding, at least regarding when merchants are bound by their agreements. Under Section 2-205, a written, firm offer to buy or to sell goods is not revocable for a limited time (not to exceed three months) even though no consideration has passed. Under Section 2-207, an offer to buy goods may be accepted and a contract formed, even though the acceptance contains some minor additional or different terms. Section 2-209 permits a good faith modification of an existing sales contract without additional consideration.

### Title Passing Concept

The basic approach to determine questions of title is generally stated in Section 2-401: (1) title cannot pass unless the goods can be identified; (2) a security interest may be maintained even though title passes; (3) physical movement of the goods is generally required for title to pass; and (4) even though title has passed, the buyer may reject the goods and title reverts to the seller.

## Performance

Section 2-601 of the Code states that "if goods or the tender of delivery fail in any respect to conform to the contract" the buyer has the option to accept all of the goods, reject all of the goods or accept those goods that it is commercially reasonable to accept and reject the balance of the goods. Section 2-612 provides that, unless the nonconformity impairs the value of the entire contract, the seller is entitled to "cure" the nonconformity and provide the buyer with adequate assurance that it will do so. This concept of "cure" is set forth in Section 2-508, whereby a seller is permitted to remedy a defective tender if he or she can do so within the time originally set for performance.

## Remedies for Breach

When the seller fails to perform, the buyer has a right to "cover." Section 2-712 allows a buyer the alternative right to purchase substitute goods and recover from the seller the difference between the contract price and the cost of cover as an absolute measure of damages, provided the buyer purchases these substitute goods in a reasonable manner. Consistent with the right to cover, the buyer's alternative right to sue for damages is measured by the difference between the contract price and the market price at the time he or she learned of the breach (the time when they could have made a cover purchase), and not the market price at the time when the goods should have been delivered (§2-713).

The seller has the absolute right to resell the goods wrongfully refused by the buyer and to recover the difference between the resale price and the contract price, provided the resale is "commercially reasonable" (§2-706). Section 2-709 expressly permits the seller to recover any lost profits that he or she would have received had the buyer performed; case law, on the other hand, has been reluctant to allow a recovery of profits.

The court, under the provisions of Section 2-302, may refuse to enforce a contract that it finds to be unconscionable or may strike out any unconscionable clauses and enforce the contract as if the stricken clause had never existed.

## Warranties

Under Section 2-314 there is an implied warranty not only for the sale of goods in which "the seller is a merchant with respect to goods of that kind" but also for the "serving for value of food or drink to be consumed either on the premises or elsewhere."

Disclaimer of warranties is still permitted as a matter of freedom of contract, but with the condition that, if in a written contract, the disclaimer must be conspicuous; to disclaim the implied warranty of merchantability, the writing must mention the word "merchantability" (§2-316).

## Battle of the Forms

Section 2-207 creates a concept known as the "battle of the forms." The UCC provides that, if a party to an agreement provides additional terms, they are to be construed as proposals for additions to the contract and they will become a part of the contract unless the offer expressly limits the acceptance to the terms of the offer, the additional terms

materially alter it, or there has been notification of objection within a reasonable time.

Including a provision in an overall agreement of sale (such as a signed credit application that acts as a contract) that precludes additional terms, unless agreed to in writing by the vendor, can eliminate the battle of the forms.

## ARTICLE 2A: LEASES (2002)

### Scope

Article 2A applies to all leases, which are defined as the transfer of the right to possession and use of goods for a term in return for consideration (§§2A-102 and 2A-103). A finance lease is also governed by the Article, which is defined as a lease in which the lessor does not manufacture or produce the goods and the lessor only acquires the goods in connection with the lease.

The Article generally preserves the concept of freedom of contract except that there are special rules for consumer leases. If a court finds as a matter of law that a lease or clause is unconscionable at the time it was made, the court may refuse to enforce such lease or clause that is unconscionable.

### Construction of a Lease

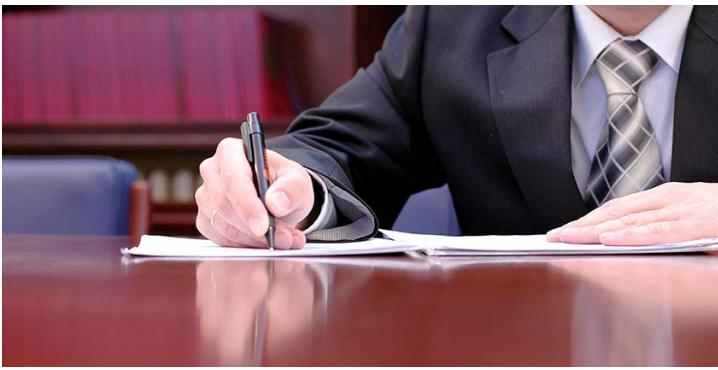
A lease contract can be made in any manner that shows agreement between the parties. Even if one or more terms are omitted, a lease contract is valid if the parties so intend it (§2A-204). A written offer by a merchant to lease goods that gives assurance that it will be held open is firm and not revocable for lack of consideration during the time stated in the offer or for a reasonable time not to exceed three months (§2A-205).

An agreement to modify a lease needs no consideration to be binding (§2A-208). The benefit of a supplier's promise to the lessor under a supply contract and of all related warranties under such contract are extended to the lessee to the extent of the lessee's interest under a finance lease related to such supply contract (§2A-209).

The function of the lessor in a finance lease is very limited, since the lessee looks to the supplier of the goods for warranties and similar matters. The supplier and lessor can modify the supply contract unless the lessee has previously entered into a supply contract with the lessor.

## Reminder to All CFDD Chapters

As CFDD chapters elect new boards of directors, please keep CFDD National in the loop! Please send an email to National ([cfdd@nacm.org](mailto:cfdd@nacm.org)) with contact information for all newly installed board members. We appreciate your help in this matter.



## Warranties

Promises made by a lessor to a lessee create a warranty that the goods will conform to the promises. Any description of the goods creates an express warranty that the goods will conform to the description, and any sample or model used creates a warranty that the goods will conform to the sample or model.

## Effect of a Lease Contract

A lease contract is effective and enforceable between the parties, except as is otherwise stated in Article 2A, against purchasers of the goods and against creditors of the parties. The effectiveness of the lease does not depend on any filing. Article 2A applies whether the lessor, lessee or a third party has possession or title (§2A-302).

Any interest of a lessee or a lessor under a lease contract may be transferred unless the lease prohibits the transfer or the transfer materially changes the duty or materially increases the burden of risk imposed on the other party (§2A-303).

If goods are returned to a lessor, the lessor may subsequently lease such goods and the subsequent lessee will obtain the same leasehold interest in the goods that the lessor had (§2A-304). A lessee can transfer his or her interest in leased goods to a buyer or sublessee (§2A-305).

If a person in the ordinary course of business furnishes services or materials with respect to leased goods and obtains a lien given by statute or rule of law upon such goods in the possession of that person, such lien can take priority over any interest of the lessor or lessee under the lease and the lien is enforceable (§2A-306).

A creditor of a lessee takes subject to the lease contract unless the creditor acquires a lien in the goods before the contract became enforceable or unless the creditor holds a security interest in the goods. A lessee in the ordinary course of business takes a leasehold interest free of a security interest in the goods created by the lessor even if there is a perfected security interest and the lessee knows of its existence. A lessee other than one in the ordinary course of business takes a leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquired knowledge of the lease, or more than 45 days after the lease becomes enforceable, whichever first occurs (§2A-307).

A creditor of a lessor in possession of goods subject to a lease may treat the lease as void if, as against the creditor,

retention of possession by the lessor is fraudulent under any statute or rule of law. However, retention of possession in good faith and in the current course of trade by the lessor for a commercially reasonable time after the lease becomes enforceable is not fraudulent (§2A-308).

## Performance of a Lease Contract

A lease imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives such assurance, if commercially reasonable, the insecure party may suspend any performance for which payment has not been received (§2A-401).

## General Default

A default is determined by the lease agreement and Article 2A. If either party is in default under the lease, the party seeking enforcement may obtain a judgment or otherwise enforce the lease by self-help or any available judicial or nonjudicial procedure. Remedies are cumulative (§2A-501).

A lease may include rights or remedies for default in addition to or in substitution for those provided in Article 2A (§2A-503). A lease may also provide for liquidated damages but only in an amount or by a formula that is reasonable in light of the anticipated harm caused by the default (§2A-504).

## Statute of Limitations

An action for default under a lease, including a breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. The parties, however, may reduce the period of limitation to not less than one year (§2A-506).

## Default by Lessor

Section 2A-508 establishes the lessee's remedies on default, which include canceling the lease, recovering so much of the rent and security that has been paid, and recovery of damages. The lessee may reject or accept the goods or any part thereof, but such rejection is ineffective unless it is done within a reasonable time (§2A-509).

## Default by Lessee

Section 2A-523 establishes the lessor's remedies, which include canceling the lease, withholding delivery, or recovering damages. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods, and, if the lessee is in default, the lessor may take possession of the goods without judicial process provided no breach of the peace results (§2A-525). A lessor may stop goods in possession of a carrier if they discover the lessee to be insolvent (§2A-526).

*Excerpted from the NACM Manual of Credit and Commercial Laws, Volume II, Commercial and Consumer Credit Topics, Chapter 3, The Uniform Commercial Code: An Overview. For the full text of this chapter or information on contracts, credit applications, secured transactions, bad check laws, negotiable instruments, bankruptcy, antitrust, escheatment, letters of credit, SOX and many other relevant topics, please consult the Manual. The current edition of all four volumes of the Manual of Credit and Commercial Laws is available at the NACM Bookstore.*

## Member Viewpoint—2017 CFDD National Conference

I have been fortunate over the course of my career to work for an employer who recognizes the importance of professional growth through continuing education. Over the past several years, I have attended numerous NACM Credit Congress and CFDD National conferences. This September, I was given a different opportunity—being a member of the host chapter of 2017's CFDD National conference held in Omaha, Nebraska.

I admit that I was expecting the usual conference offerings: educational sessions I have more than likely sat through previously, cocktails with the usual crowd, and chicken (yes, chicken) served over and over again in newfangled ways to convince you that you're not getting "conference chicken." This year, more than 60 credit professionals attended the conference held near the Old Market district of Omaha. I feel that I can safely speak for all of them when I say we were pleasantly surprised and tremendously appreciative of the fact that we never once saw conference chicken at this conference.

For whatever reason, I seem to always receive a bit of grief from my noncredit colleagues when I tell them I will be out of the office for a credit conference. I've tried explaining to them until I'm blue in the face how exciting the field of credit can be. Let's just say that when you get several credit professionals in a room, it can get downright crazy! In all seriousness, there were some very fresh and informative educational sessions. Here are a few examples of the sessions that brought some insightful angles and ideas to managing credit.

### 1. Leader vs. Managers

Presented by Marlene Groh, CCE, ICCE, and Val Hardesty, CBA, CICP

Attendees formed small groups to present scenarios showing the importance of having attributes of both leaders and managers.

### 2. Adapting to Change Through Mergers & Acquisitions

Presented by Mary Moore, CBA, and Dave Beckel, CCE

While not all credit professionals will go through a merger or acquisition during their career, being prepared for when that happens can reveal what an asset the credit department can be to your company.

### 3. Strategically Unveiling Potential Revenue Streams

for Your Company's Bottom Line Presented by Chris

Birdwell and Heidi Lindgren-Boyce, CCE

Shedding the myth of the credit department as "collectors," this session provided several ideas on how the credit department can add to the bottom line.

I would like to personally thank the CFDD National Board of Directors and the representatives from NACM National for providing such a refreshing conference. The educational offerings and networking opportunities with fellow CFDD members and peers from across the country provided an invaluable experience. If you have not attended a CFDD National Conference, please plan to attend one in the future.

*Submitted by Jim Hushka, CCE, CICP, Area Director on CFDD Board of Directors, CFDD Omaha/Lincoln Chapter, International Credit Manager, Warren Distribution Inc.*

## CFDD National's Educational Programs

Now available, CFDD National's programs free of charge!

Program topics include:

- Credit Jeopardy
- Financial Statement Analysis and Credit Scoring
- Human Resources and the Credit Manager
- Internal Controls
- Mentor Training Workshop

These programs can be conveniently downloaded from the [CFDD Members Only Area](#) of the CFDD National website.

Please check out these timely resources!

## CFDD Newsletters

Did you know that you can access not only the National CFDD newsletters, but also other chapter newsletters from the National CFDD website? Need a fresh topic for an upcoming meeting or a new fundraiser idea? Is your chapter ready to launch its newsletter, but needs some direction? Check out what other chapters are doing by logging onto the [CFDD Members Only Area](#) and clicking on Chapter Newsletters from the menu on the right.

## CHECK OUT NACM'S LINEUP OF PROGRAMS AND EVENTS

|             |  |
|-------------|--|
| November 2  | <a href="#">Webinar: Global Economic Outlook</a>                                 |
| November 9  | <a href="#">Webinar: Standby Letters of Credit and Bank Guarantees</a>           |
| November 14 | <a href="#">Webinar: OFAC, UN and EU Embargos and Bank Policies</a>              |
| November 16 | <a href="#">Webinar: How Technology Could Change Credit Management Practices</a> |
| November 30 | <a href="#">Webinar: Leadership Webinar Series: Conflict Resolution</a>          |
| December 12 | <a href="#">Webinar: Dual-Use Goods</a>  |
| December 13 | <a href="#">Teleconference: My Customer Filed Bankruptcy: Now What?</a>          |
| January 16  | <a href="#">Webinar: Trade-Based Money Laundering</a>                            |

## Monthly Credit Survey

You are invited to participate in the monthly Credit Managers' Index (CMI) survey of U.S. credit and collection professionals. Each time you take the survey, you receive 0.1 point toward your [NACM Career Roadmap](#). Contribute to the CMI and have your experience count.

The results from the survey are processed and presented each month in NACM's eNews and *Business Credit* magazine and at [www.nacm.org](http://www.nacm.org). Since its inception, the CMI has been a startlingly accurate economic predictor, most notably proving its worth during the recession.

The survey asks participants to rate whether factors in their monthly business cycle—such as sales, new credit applications, accounts placed for collections, dollar amount beyond terms—are higher than, lower than or the same

as the previous month. The results reflect the entire cycle of commercial business transactions, providing an accurate, predictive benchmarking tool.

All credit and collections professionals are invited to take the survey each month during the time frames listed below. NACM membership is not required.

*Read more about the CMI [here](#).*

### Upcoming Survey Dates

| CMI Timeline | Survey Opens     | Survey Closes           |
|--------------|------------------|-------------------------|
| November     | Mon, November 13 | Fri, November 17 (noon) |
| December     | Mon, December 11 | Fri, December 15        |
| January      | Mon, January 15  | Fri, January 19         |

## CFDD MISSION STATEMENT

The mission of the NACM Credit and Financial Development Division is to develop tomorrow's business leaders through core offerings.

## CFDD VISION STATEMENT

To be a leading provider of professional development opportunities through learning, coaching, networking and individual enrichment.

# CFDD Logo Items

Searching for that perfect gift that combines practicality, value and pride? Look no further than CFDD's extensive selection of logo items! From pens to mugs, CFDD logo items can satisfy even the most discerning recipient. They also make great gifts for speakers and special guests. Don't delay! Browse the [CFDD logo item web pages](#), part of the online [NACM Bookstore](#), and purchase merchandise that reflects your investment in the CFDD professional credit community!

## CFDD logo items currently available:

Can Holder (\$2)

Cell Phone Power Bank (\$18)

Luggage Grip (\$2)

Stylus Twist Metal Pen (\$10)

Translucent Blue Pen (\$1)



New Item

