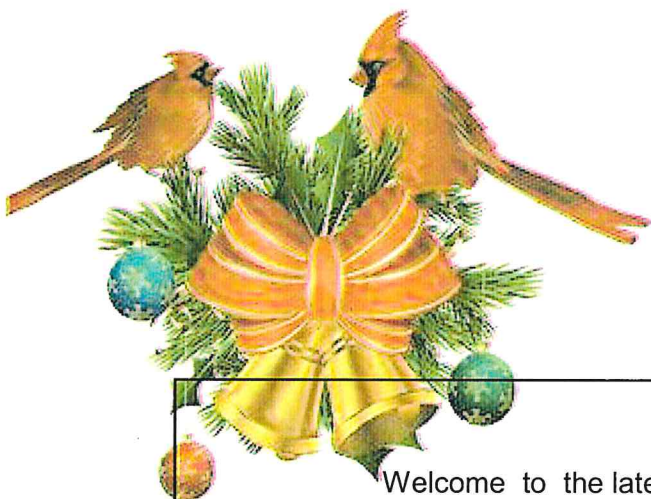


community BANKER



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Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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YOU ARE ASKING . . .

Q: We've been asked to give a short talk for the local senior citizens group about prudent use of a bank's safe deposit box. Obviously, a box is a good place for things such as birth certificates, motor vehicle titles, and U.S. Savings Bonds (that haven't been converted into electronic securities), wills, and family keepsakes. What things should not be kept in a bank safe deposit box?

A: People should be advised not to store anything in a bank safe deposit box that he or she might need quick access to - keeping in mind that there are certain hours and the weekends when the bank is not open. What comes to mind would be cash, passports, and the original of power of attorney document or healthcare directive document. In our experience, emergencies often arise late Friday afternoon. It's not wise to keep key documents inaccessible because important decisions sometimes just can't wait until Monday at 9 am.

With regard to cash, cash that's not in a deposit account isn't protected by FDIC insurance because the FDIC only insures deposits in deposit accounts at insured institutions. Not only that, it's not accruing interest.

Finally, note that he or she can jointly rent a safe deposit box with one or more people if they would like to give unrestricted access to those people. They should know, though, that a bank is likely not responsible for anything that people authorized to enter the box remove without their permission.

Q: Our bank has more than a few deposit accounts that were opened years ago and required two signatures for withdrawals. It's become a burden for bank staff to validate the incoming clearing checks, and ideally we'd like to remove the two signatures requirement. How do we go about doing this? Is a simple notice that we no longer will do two-signature verification sufficient?

A: The bank would have to enter into a new agreement with the customer. There's an account agreement somewhere where the bank and the customer agreed upon two signatures. That document most likely requires you to examine the checks for two signatures and you can't just say you won't do it anymore (unless it says you can give notice and stop doing it).

Q: We have an older customer who thinks that a man she met online (he's supposedly in Croatia) loves her and wishes to come here and take care of her, if only she sends him \$17,000 to tie up his business affairs there. He's told her that he will, of course, pay her back. She has cognitive impairment after suffering a stroke, but she did decide not to wire him money after we strongly discouraged it; we were sure that she finally realized this was a scam. Now we see that she's written a personal check for \$17,000. We placed a stop payment on this and we've gotten law enforcement involved. He's actually threatened to sue us, and she is not happy with us. Thoughts?

A: This appears to be a case of financial exploitation, which is financial abuse. Required reporting of abuse of the elderly or vulnerable in North Dakota includes financial abuse, but banks are not mandated reporters.



However, it's not a violation of the duty of customer confidentiality if a bank employee reports suspected exploitation of an eligible adult to North Dakota Vulnerable Adult Protective Services or to law enforcement. See N.D.C.C. § 6-08.1-03(7). Under N.D.C.C. § 6-08.5-03(3), an officer, director, or employee of a bank is immune from all criminal, civil, and administrative liability for reporting, based on a **good faith belief**, that financial exploitation occurred, was attempted, or is being attempted. Specifically, the law gives you permission to stop that check as you did. N.D.C.C. § 6-08.5-02(1) provides that if a bank has a good faith belief to suspect financial exploitation occurred, was attempted, or is being attempted, a bank may refuse a financial transaction on an account belonging to the eligible adult.

If a bank does refuse a financial transaction or holds a financial transaction based on a good faith belief to suspect financial exploitation, it must make a reasonable effort to notify one or more parties authorized to transact business on the account (except with regard to an account administered by a bank or trust company in a fiduciary capacity), and report the incident to the department of health and human services if the incident involves financial exploitation of a vulnerable adult. A bank is not required to notify a party authorized to conduct business on the account if that person is the suspected wrongdoer. N.D.C.C. § 6-08.5-02(4) & (5).

A bank or its employees, officers, or directors are immune from all criminal, civil, and administrative liability for refusing or not refusing a financial transaction, or for holding or not holding a financial transaction under N.D.C.C. § 6-08.5-02(6).

In sum, you can protect customers from themselves, but you aren't obligated to protect customers from themselves. Information on reporting abuse and neglect of a vulnerable adult may be found at <https://www.hhs.nd.gov/adults-and-aging/reporting>.

