community BANKER

JANUARY / FEBRUARY 2025

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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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

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WE'RE GETTING WHIPLASH

In a newsletter published in the fall of 2023 we discussed the Corporate Transparency Act, which implemented new regulations requiring certain entities, referred to as "reporting companies", to file Beneficial Owner Information (BOI) for each person deemed a beneficial owner. We thought it important to be aware of this because entities – especially small businesses – are the lifeblood of community banks. As you may recall, the Act set a filing deadline of January 1, 2025, for initial reports to be filed by reporting companies formed *before* 2024; reporting companies formed in 2024 were required to file within specified time periods.

The requirements are burdensome. "Beneficial Owners" include anyone who owns 25% or more of a reporting company or who has "substantial control" over an entity. "Substantial control" is vague and wide-ranging, so many people who are officers, directors, managers, or even key employees of a reporting company may have to provide information as a beneficial owner. Additionally, if a trust owns or controls interests in a reporting company, the filing requirements are even more complicated and many (or all) people named in fiduciary and certain beneficiary or other capacities in the trust may have to file beneficial ownership information regarding the reporting company.

Naturally, litigation about this governmental overreach on small businesses ensued. On December 3, 2024, a federal district court judge in Texas issued a nationwide preliminary injunction barring enforcement of the Act, finding that it likely exceeds Congress's powers. On December 23, 2024, a 5th Circuit panel ruled in the government's favor, lifting the injunction and giving a two-week delay to meet the reporting requirements – entities had until January 13, 2025 to file their reports on their beneficial owners. A second 5th Circuit panel issued an order on December 26, 2024, again staying or stopping enforcement of the Act. On January 24, 2025, the U.S. Supreme Court lifted the injunction, leading many to believe that BOI filing must now be completed. Four orders in the space of a month halting, starting, halting, then re-starting the reporting requirements has caused a good deal of confusion.

On January 24, 2025, FinCEN itself issued additional guidance with respect to the U.S. Supreme Court's ruling lifting the nationwide injunction. Because a separate nationwide order issued by a different federal judge in Texas remains in place, reporting companies are currently **not required** to file beneficial ownership information with FinCEN. However, reporting companies may *voluntarily* submit beneficial ownership information reports.

So, for those "reporting companies" that have not filed their reports with FINCEN, they may delay filing until the courts sort this out, or they may go ahead and file. The guidance states that no entity is required to comply with the CTA, but be aware that further guidance or court decisions could reinstate the Act's enforceability. With that said, it's prudent for reporting companies to at least have the required information at hand - meaning a determination of who exactly *is* a beneficial owner and having copies of their driver's licenses. It may not be needed, or, depending on the next court order, it may be needed under a short deadline.

YOUR OPINION COUNTS

The North Dakota Legislature is currently in session and your thoughts on the bills matter. While there are competent lobbyists, all citizens have the right to testify on any bill or resolution. Legislative committees meet in rooms at the State Capitol, and you can go into a hearing at any time, even if the door is closed or a hearing is in progress. Find out when and where a bill that affects you will be heard. Be on time for the hearing because once a hearing is closed on a particular bill, no further testimony is heard. It's not required, but it's a good idea to have written copies of your proposed testimony or comments to jog your memory or make sure you make your points. Too, if there's a large turnout and you don't have a chance to speak, you can submit your written testimony. Even if you don't intend to speak and just want to see what's going on, sign the witness sheet at the lectern; give the bill number and indicate whether you favor or oppose the bill and sign your name. If you are intending to speak, introduce yourself "Good morning, Mr. Chairman and committee members, by name is George Washington and I oppose this bill because . . ." Don't repeat what the person before you said, be brief, and be conversational. There is no right or wrong way to testify, and you should expect some questions and comments from committee members.

YOU ARE ASKING . . .

Q: A husband and wife shared a joint checking account; unfortunately, husband died about a month ago. We have let the wife continue using the account and we have removed his name from the account. His death was sudden and unexpected and we didn't want to add to her distress, but we are wondering that now that some time has passed whether we should require closing the account and opening a new one. Thoughts?

A: This is a bank business decision and there is no "right" or "wrong" way to deal with this. Some banks do as your bank has done – no one wants to put someone who has just suffered the loss of a spouse or other loved one through the trouble of opening a new account. Some banks will not remove the deceased from a joint account and instead will require the survivor to open a new account. It seems that if it has been satisfactorily proven to the bank that the other joint owner is deceased, it should be safe to just remove that person.

A different example – if elderly mom in Minot, son in Fargo, and daughter in Bismarck are joint account holders, you should require proof of son's death before you go along with daughter's request and remove him from the account.

Regarding the mom, son, and daughter example, remember that the joint account holders have an ownership interest in the account and one owner can't just remove another owner. An authorized signer on a bank account is different – it's a person that the primary account holder authorizes to use the account, for example, to make withdrawals and deposits and to write checks. Typically, banks do not consider authorized users or signers as joint account *owners*. Generally, banks consider the primary account holder the owner of the account, so in that case a primary account holder may remove the authorized signer from the account without his or her consent. That's another bank business decision, and your bank's rules

regarding the removal of an authorized signer from the account may be different from the bank across town.

Q: Can a check payable to "LILLY DOE Life Estate Tenant u/t/w (under testamentary trust under will) of Jacob Doe, Deceased and Child A, Child B, and Grandchild C, Remaindermen" be deposited into the individual account of Lilly Doe, the life tenant? Or does it have to be deposited into a multi-party account owned by all of the named parties?

A: If she's alive, it may be deposited into Lilly Doe's individual account. The remaindermen have no existing legal interest in the payment. Their interest kicks in when Lilly Doe dies.