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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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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Q: Summer is fast approaching, and people will be coming in with sunglasses and caps all the time. We've discussed new signage asking people to remove caps and sunglasses. Thoughts?

A: Through the years the FBI has let it be known that prohibiting face coverings should be the policy across the land. It's your bank, and you can certainly prohibit caps, hoods, and sunglasses. Frankly, not only employees but other customers are uncomfortable when someone comes in looking like he's going to rob the joint. Signs can be ordered and put on the front door saying something like

FOR THE SAFETY OF CUSTOMERS AND EMPLOYEES,
NO HATS, NO HOODS, NO SUNGLASSES

In the same vein, I once saw a customer in a Santa Claus suit, complete with a beard and red hat in the bank lobby transacting business. Of course, the first thing I thought of was "that's a perfect disguise for a bank robber." It is. Don't hesitate to tell Santa that your security cameras like to see faces and that he must remove or lower his beard pursuant to bank policy.

Q: The bank has a customer who is a limited liability company. The LLC had two members, who were brothers. One member recently sold out to the other member. Does the LLC need to get a new EIN and open a new account or can it keep the same EIN and account?

A: If the LLC has now reorganized as a single-member LLC by filing new information with the office of the North Dakota Secretary of State, your customer should check with its accountant to determine whether it needs to obtain a new EIN. While that's happening, the bank need not open a new account; it also need not concern itself with the EIN issue unless the LLC tells the bank it has obtained a new number. You can certainly ask the sole member if the LLC has a new tax identification number.

If the LLC has *not* reorganized itself as a single-member LLC, there is no need to obtain a new tax id number or open a new account because none of the old information has changed.

No matter what, though, because one brother is no longer a member of the LLC, the bank should get an updated resolution from the LLC and update its forms identifying the current authorized signer on the account.

Q: A customer wants to close an account that has a balance under $100. Is there a "best practice" as to whether the bank should issue a cashier's check, or should we just have the customer sign a closing ticket or slip and document upon it that the customer took cash?

A: Along with the closing ticket signature, issuing a cashier's check or getting your customer's signature to obtain cash and close out the account *both* provide a record or documentation of the withdrawal and either one is appropriate. It seems that if the customer is right in front of you, it's faster and cheaper to hand him or her the money and get the required signature(s). Having said all of that, please check your bank's internal policies to make sure that the bank doesn't require something specific.

Q: When a non-customer comes in to cash an "on-us" payroll check (the business deposit account for the payroll checks is with our bank), we take his or her information from the driver's license and enter it into our records. Can we also ask for the person's social security number, even if he or she is not a customer?

A: You may get that information from the person cashing the check. North Dakota has no law prohibiting a bank from asking for a social security number in the course of bank transactions.

Q: Our bank seems to get at least one Durable Power of Attorney documents every month or so. What are some of the basic things we should know?

A: The principal – the person designating another person as his or her "attorney in fact" – will have executed a written document granting authority to act on his behalf.

Note the words used in granting authority. It will generally contain the words "This power of attorney is not affected by subsequent disability or incapacity of the principal or by lapse of time," *or* "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the *intent* of the principal.

With the first option, the principal's later incapacity won't terminate the attorney-in-fact's authority.

With the second option, the authority isn't triggered *until* the principal is disabled or incapacitated. Typically, before the attorney-in-fact may act under the POA document, a letter from a doctor (or maybe more than one doctor) is required stating the physician's opinion that the principal is incapacitated. The POA document that doesn't take effect immediately is sometimes called a "springing" power of attorney because it "springs" into effect when the principal is declared incompetent or unable to make decisions.

If it's a "springing" type, note whether the triggering event has occurred. Did the attorney-in-fact bring in copies of the doctor's letters or whatever requirement is set out in the document? If there is a question, check with the bank's legal department or get other competent legal advice.

Note the identity of the person claiming to be the attorney-in-fact or agent. Can you verify the identity? Check his or her driver's license if this is a stranger to you. Is there something suspicious about any of this?

Note whether the Power of Attorney document gives the authority for the attorney-in-fact to do what he or she is asking to do on behalf of the principal.

Note whether the Power of Attorney document has a termination date. If there's a termination date, the attorney-in-fact cannot act under the POA after that date.

Note whether the principal has died. When a principal dies, the authority granted to the attorney-in-fact is terminated. Sometimes, the principal dies and the attorney-in-fact is unaware of that but acts on his authority. Sometimes, the principal dies and the attorney-in-fact knows that but still acts on his authority - but the bank doesn't have actual knowledge of the death. Those who act in good faith without actual

knowledge of the death are protected by N.D.C.C. § 30.1-30-04, which says that the authority doesn't terminate if there was good faith and no knowledge of the death.

If the principal has died and the attorney-in-fact doesn't know it and acts on the principal's behalf in good faith, the attorney-in-fact is protected by N.D.C.C. § 30.1-30-04 and the authority is still valid. Likewise, if the bank doesn't have actual knowledge that the principal has died but in good faith enters into some transaction with the attorney-in-fact, it is protected under N.D.C.C. § 30.1-30-04.

North Dakota's Uniform Durable Power of Attorney Act is found at N.D.C.C. Ch. 30.1-30.