

community BANKER

NOVEMBER/DECEMBER 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:

Community Banker
c/o Olson & Burns P.C.
P.O. Box 1180
Minot, ND 58702-1180

olsonpc@minotlaw.com
Also, visit our web site at:
www.minotlaw.com

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.

DISCLAIMER

COMMUNITY BANKER is designed to share ideas and developments related to the field of banking. It is not intended as legal advice and nothing in the COMMUNITY BANKER should be relied upon as legal advice in any particular matter. If legal advice or other expert assistance is needed, the services of competent, professional counsel should be sought.



OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: olsonpc@minotlaw.com

YOU ARE ASKING

Q: A customer has been a flooring installation sole proprietorship with a D/B/A account using the owner's Social Security number – all was well. The customer recently changed his business entity to an LLC with an EIN. Should we change the account number itself (it's actually a new person) or just update the signature card to show that the manager of the LLC is the signatory party and remove the DBA on the account?

A: The bank should open a new account for the LLC because, as you noted, it's a different person. The owner of the DBA may want to keep the original account open for a while to pay the bills that may come in, but after outstanding checks clear it should be closed.

Also, because this is a different person, remember to undertake the CIP and Beneficial Ownership procedures. You may know your human customer, but the LLC is a new customer and you have to treat it like any other new customer that is a business entity.

There are other considerations regarding the Bank Secrecy Act, Anti-Money Laundering Act, and Countering the Financing of Terrorism (BSA/AML/CFT) requirements if the sole proprietorship was on your Currency Transaction Report exemption list. Be aware that the new LLC will not automatically be exempt.

Q: We have safe deposit boxes with old keys that have the bank's routing number and the box numbers imprinted on them. Should we take this information off each key?

A: Identifying which bank has the box would save a good deal of trouble after the death of a box renter for the surviving family members or the personal representative. However, that good deed should be balanced against giving a helping hand for unauthorized access to someone who steals or finds the keys. Your bank will have to decide whether the added expense of removing the old information from the keys is a worthwhile investment. In making your decision, don't forget the fact that most of the keys are not in the bank's control, so your removal effort will have to be done on a haphazard basis whenever the keys come back in to your possession.

Q: A certificate of deposit is set up as Mom and Dad, POD Daughter. Daughter has called and has asked questions about the CD such as the term, the value, whether there is another POD, etc. I have told her we can't provide information, but she's called three times already. Mom and Dad are in their late 60's and healthy. She has no authority under a power of attorney document and she has no present ownership interest in the CD.

A: You are proceeding correctly. You cannot give her any information because she isn't an owner of the CD - don't even admit the existence of the CD to Daughter. Giving her information is a violation of N.D.C.C. Ch.6-08.1, Disclosure of Customer Information. If Mom and Dad want her to know the details, they can tell her themselves or they need to give the bank *proper* consent to the disclosure. Under N.D.C.C. § 6-08.1-03(1), Duty of confidentiality, a bank may disclose customer information "Pursuant to consent

granted by the customer in accordance with this chapter.” Note that “consent” isn’t Mom’s phone call saying “It’s ok to answer her questions” because it’s more involved than that. When it comes to a customer giving consent for disclosure of customer information, the law provides in relevant part that

2. A valid consent must be in writing and signed by the customer. In consenting to disclosure of customer information, a customer may specify any of the following:

- a. The time during which such consent will operate.
- b. The customer information to be disclosed.
- c. The persons, governmental agencies, or law enforcement agencies to which disclosure may be made.

N.D.C.C. § 6-08.1-04(2). If Mom and Dad actually want her to know anything, it’s easier for them to just tell Daughter rather than going through the formalities for the bank’s disclosure. Until the bank receives written consent, tell Daughter that state law prohibits the bank from disclosing Mom and Dad’s customer information.

Q: Recently we had a customer call in who wanted to name his three children as PODs on his account and he asked us to prepare the paperwork. He had recently been diagnosed with stage 4 cancer. We were more than ready to help get his affairs in order, so we promptly made the changes and printed new forms for him to come in and sign. He passed away before he could execute the new account agreement with the POD beneficiaries. Is it in any way legal for us to honor the customer’s wishes if we notate the form "as per verified telephone call" and indicate the staff member who spoke with him and the date of the call? We all really liked this man; the children will be getting the funds *anyway* and this will get it to them quicker as he wished.

A: No. The money passes to his estate and the personal representative will handle it. Your kindly heart is in the right place, but the bank cannot sidestep the requirements of the law.

Q: Reg. CC question – can you elaborate a bit on the Next Day requirements with regard to funds availability?

A: The funds availability reach of Reg CC (located at 12 C.F.R. Part 229, Availability of Funds and Collection of Checks) applies to the collection and availability of funds in checking accounts for consumers, business, or agricultural depositors.

Subpart B of Reg. CC sets out how and when your bank must make deposited funds available to customers without *undue* delay – which means that some delay is legal and permissible. The allowable delay expressed in 12 C.F.R. § 229.10 requires that your bank make certain types of deposits available the very next business day. These are "next-day items." Note that a "business" day is defined in 12 C.F.R. § 229.2(g) as

“a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in

September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day."

Deposits received after hours is deemed "received" on the next banking day, or the next day the bank is open. This is significant because the clock starts ticking when a deposit is "received". If Customer Jones makes a deposit at your bank Friday afternoon after your bank's cutoff time, the deposit is "received" on Monday morning. Tuesday is then considered to be the "next day," and Wednesday is the "second day." Note the last sentence in the rule about certain Mondays not being a business day.

The next day items are the deposits that Reg CC requires to be made to the customer no later than the very next business day after deposit – on Tuesday in the example above. Generally, the item must be deposited in person with an employee of the bank, and into the customer/payee's own account. These include deposits such as cash, electronic deposits, what § 229.10(c) calls "certain check deposits" which include checks drawn on the U.S. Treasury, U.S. Postal Service money orders, checks drawn on a Federal Reserve Bank or Federal Home Loan Bank, checks drawn on the state or unit of the local government, cashier's, certified, or teller's checks, checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank ("On Us" checks), and the first \$275 of any other item.

Everything else must be made available by the second business day - the "second day items." Your bank may as part of your bank's policy delay availability to the second business day all personal checks except for "on us" checks and all of the "certain check deposits" that do not meet their respective conditions (for example, a U.S. Postal Service money order must be deposited in an account held by a payee of the money order and deposited in person to an employee of the depository bank). See 12 C.F.R. § 229.10(c)(1)(ii)(A) & (B).

There are a few other rules that allow your bank to further delay cash in some situations, to add another processing day if your bank is located outside the continental U.S., or to delay deposits made to non-proprietary ATMs. Note that exceptions are permitted if an extenuating, exceptional circumstance exists - the bank may delay availability on individual items, but only within strict guidelines.

Note also that banks may have a policy of making deposits available earlier than the regulatory requirements, such as making electronic direct deposits available on the same day the bank receives it. This is permissible so long as the bank *discloses it* in its funds availability policy.